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

(March 11, 1946)

COSTAS HARALAMBOU, *Appellant,*

v.

REX, *Respondent.*

(Criminal Appeal No. 1818.)

Criminal Law—Murder—Provocation—Cyprus Criminal Code, sections 194 and 197—Evidence—Benefit of doubt—Inference to be drawn from evidence.

The appellant admitted that he killed his father with two blows from an adze delivered on the top of his father's head. The appellant's story that he was attacked by the deceased and that he used the adze in self-defence was disbelieved by the trial Court.

Held, that, once the appellant's story of the events immediately preceding the killing of his father had been rejected, there was no evidence at all before the trial Court from which they could possibly have inferred that provocation had been offered by the deceased. To have done so would have been to go outside the evidence altogether and would have amounted to pure speculation.

Appeal from the Assize Court held at Nicosia.

J. Clerides for the appellant.

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

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

JACKSON, C.J. : In this case the appellant admitted at his trial that he killed his father with two blows from an adze delivered on the top of his father's head. The nature of the weapon and the fact that the cutting edge was used twice were facts from which the trial Court was entitled to infer, and must have inferred, at the least, an intention on the part of the appellant to cause grievous bodily harm to his father. Consequently the appellant's act amounts in law to murder, under sections 194 and 197 of the Criminal Code, unless grounds can be found for the reduction of the offence from murder to manslaughter.

The appellant's story that he was attacked by his father and that he used the adze in self-defence was disbelieved by the trial Court and, in our opinion, rightly disbelieved.

The position, therefore, was that the trial Court was without any evidence on what actually occurred in the hut immediately before the fatal blows were struck. Mr. Clerides argued for the appellant that since, in these circumstances, there must be doubt about what happened

1946
March 11
—
COSTAS HARALAMBOU
v.
REX.

in those moments, the trial Court could not have been certain that there had been no provocation on the part of the deceased, that this doubt ought to have been resolved in favour of the appellant, and the Court should have convicted him of manslaughter and not of murder.

This argument must mean that the trial Court should have acted on the assumption that there was provocation for the appellant's act, notwithstanding that there was no evidence which the Court believed from which provocation could be inferred. Woolmington's case (Criminal Appeal Reports, Vol. XXV, p. 72) gives no authority for that proposition. In that case the defence was accident. Mancini's case (All England Law Reports, 1941, Vol. 3, p. 272) is more in point but in more than one passage in the judgment of the Lord Chancellor in that case emphasis is laid on the necessity that there must be evidence before the jury which, if believed, could be taken to amount to sufficient provocation to justify the reduction of the crime from murder to manslaughter. At page 279 of the judgment the following passage occurs: " The duty of the jury to give the accused the benefit of the doubt is a duty which they should discharge having regard to the material before them, for it is upon the evidence, and the evidence alone, that the prisoner is being tried, and it would only lead to confusion and possible injustice if either judge or jury went outside it."

In the case before us, once the appellant's story of the events immediately preceding the killing of his father had been rejected, there was no evidence at all before the trial Court from which they could possibly have inferred that provocation had been offered by the deceased. To have done so would have been to go outside the evidence altogether and would have amounted to pure speculation.

We do not say that we concur in all the conclusions that the trial Court drew from the conduct of the appellant after the crime or as to the motive which he might have had for killing his father, but, in our opinion, they arrived at the only verdict which they could have found upon the evidence and we are bound to dismiss this appeal.