1953
Nov. 16

QUEEN
v.
CHRISTO-
DOULOS
GEORGHIOU
VOTSIS.

[HALLINAN, C.J., PIERIDES, P.D.C., AND ATTALIDES, D.J.]

(November 16, 1953)

THE QUEEN

v.

CHRISTODOULOS GEORGHIOU VOTSIS OF ORGHA.

(*Kyrenia Assizes. Case No.* 974/53.)

Evidence Law (Cap. 15) *s.* 10—*Complaint made some hours after alleged offence—Inadmissible.*

X. was charged with the murder of Y. by causing him to fall over a cliff. Y. lay paralysed for some hours half-way down the cliff before making statements which it was sought to put in evidence.

The Assize Court ruled these statements were inadmissible under the Evidence Law (Cap. 15) section 10 as not being "made, having regard to the circumstances of the case, immediately after the commission of the offence."

M. Fuad, L. Clerides and *C. Georghiades* for the accused.

R. R. Denktash, Acting Solicitor-General, for the Crown.

The accused was charged with the murder of E.E. who had died from injuries sustained in falling over a cliff. The deceased had first spoken to relations of the accused and later to witnesses for the prosecution.

The Ruling was delivered by :—

HALLINAN, C.J. : The question has arisen in this case whether certain statements made by the deceased should be admissible under section 10 of the Evidence Law (Cap. 15). The evidence so far adduced is that the deceased and the accused were in conflict at the edge of a cliff and that the deceased either fell over or was thrown over the cliff and sustained injuries which resulted in partial paralysis; although he was still *compos mentis*, he was unable to move. He lay some half way down the cliff for two or more hours before the first two witnesses to reach him arrived. He made statements to them and after an hour or more other people arrived and he made statements to them. The statements made to the first witnesses were made to people, who being relatives of the accused, he might not naturally make a statement. The statements made to other witnesses were persons to whom it would have been natural to make such statements.

The question which we have to determine is whether the statements were made, having regard to the circumstances, immediately after the offence was committed. In Cyprus,

because of this section 10 and the decision of the Privy Council in the case of *Sutton* v. *King*, 14 C.L.R., p. 160, statements or complaints are admissible not merely as in the case of sexual offences in England to show the consistency of complainant's story or to negative consent, but as evidence of the facts narrated in the statement itself. That being so and the evidence being therefore of much greater importance in Cyprus than in England, particular care should be taken that this type of evidence is not admitted unless the provisions of the section are strictly observed. The circumstance which makes such evidence admissible, the grounds for admitting such evidence, must be that a person making the statement had no opportunity of concocting the story, so that there is some element of spontaneity in the statement. The word " immediately " cannot be considered as equivalent to " at the first opportunity ". It must always be a question of fact as to whether having regard to the circumstances the statement was made immediately after the offence.

On the facts as they appear at this trial we consider that statements made by the deceased while he was lying half way down a cliff, the first of which was made several hours after the offence was committed, cannot be considered to have been made immediately after the offence. And we, therefore, rule that such statements are inadmissible. The statements made by the deceased to Neophytos Koumi and to Thomas Kouroushi which have been given in evidence by these witnesses will be disregarded by the Court and expunged from our minds.