

the question is one of jurisdiction or the application of the Marriage Law, then the test of whether a person is or is not a member of the Greek Orthodox Church must be an objective one, namely, whether one of the parties, although a former member of the Greek Orthodox Church, had by a declaration or conduct or both shown that he had seceded from that Church.

I consider that the decision of the trial Judge on the preliminary point is correct and this appeal should be dismissed with costs.

1956
April 7

MICHAEL
TSIVITANIDES
v.
MARY MICHAEL
TSIVITANIDES

[HALLINAN, C. J. and ZANNETIDES, J.]
(April 9, 1956)

1. GALATIS PETROU,
2. MICHALAKIS CHRISTOU CONSTANTINOU,
3. CHRISTAKIS THEOPHANOU KYPRIANOU,
4. CHRISTOS PAPA MICHAEL ORPHANOS,
5. STELIOS LEONIDHA, *Appellants,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No. 2041*)

1956
April 9

GALATIS PETROU
AND OTHERS
v.
THE POLICE

Criminal Law—Riot—Common purpose—Submission of “no case”—Amendment of charge.

In a charge for riot, the particulars stated the common purpose for which the crowd had assembled. At the conclusion of the prosecution's case evidence had been adduced of a common purpose but not that stated in the particulars. The trial Court rejected a submission of “no case” and amended the charge substituting particulars of the common purpose deposed to in the evidence. The accused were convicted.

Upon appeal,

Held: The trial Court did not err in rejecting the submission, or in amending the charge; but it is not necessary in charging riot to give particulars of the common purpose.

Appeal dismissed.

Appeal by accused from the judgment of the Special Court of Limassol (Case No. 30/56).

A. P. Anastassiades for appellants 1, 2, 4 and 5.

G. Cacoyannis for appellant 3.

H. G. A. Gosling, Crown Counsel, for the respondents.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: In this case many of the students of the Gymnasium in Limassol assembled in the form of a procession in their school yard on the 14th of December. At the head of this procession was a person carrying a large Greek flag, and the procession was moving towards the bye-pass road. The police arrived outside the boundary of the school and the persons in the procession assailed them by stones and, while the stones were being thrown, there were cries of EOKA and ENOSIS. The police moved in to disperse this assembly and for some hours they were assailed with stones and a bomb was thrown and some of the police were injured. No attempt apparently was made by the School authorities to control the pupils until the Commissioner of the District arrived and sent a message to the headmaster when he then apparently became aware of his duty. The school staff then intervened and the pupils were sent away.

In the charge there were two counts: One for unlawful assembly and the other for riot. In the particulars of the count for unlawful assembly it was stated that the common purpose was to protest against the closing of the Kyrenia Gymnasium. It was stated at the beginning of the trial by the prosecution that the subject matter of both the unlawful assembly and the riot was the same incident and the same common purpose. At the conclusion of the case for the prosecution there was apparently no evidence, or insufficient evidence, to go to a jury concerning the common purpose stated in the particulars, but evidence had been given that the pupils assembled in the procession were demonstrating approval of the unlawful organisation EOKA. The defence submitted that they had no case to answer and the Court, rightly in our view, rejected that submission, for although there was evidence of common purpose it was not the common purpose stated in the particulars. Upon a submission of "no case" it is not a question of stopping the case because the charge is defective (for the charge can be amended); it is a question of whether there is sufficient *prima facie* evidence to support a charge. The Court then allowed an amendment of the particulars to the charge to be made by substituting for the common purpose as stated in the particulars the common purpose that the pupils had assembled to demonstrate approval of the unlawful organization EOKA. We are clearly of opinion that the Court had authority under section 81 (1) of the Criminal Procedure Law to make this amendment provided that the amendment did not prejudice the defence. The Court allowed the defence to recall any witnesses for cross-examination and, in fact, the principal witness was called and cross-examined by the defence. In our view, the Court rightly amended the defect in the charge and it did not prejudice the defence of the appellants.

Counsel has submitted a point which we have allowed him to argue although it may not strictly arise out of

his grounds of appeal, namely, that section 67 of the Criminal Code provides that to constitute riot an unlawful assembly must have begun to execute its purpose by a breach of the peace and counsel has submitted that the breach of the peace by the throwing of the stones was not done in order to execute the common purpose of the assembly. The appeal before us this morning is a question of law and not of fact and this point, in one view, is a question of fact. There was evidence before the Court that the stones were thrown pursuant to the common purpose to demonstrate approval of EOKA.

The second ground of appeal is that there was no evidence or only a scintilla of evidence to support the allegation of a common purpose as amended in the charge. It is sufficient to dispose of this ground of appeal by saying that there was sufficient evidence to go to the jury that the common purpose of the assembly was to demonstrate approval of EOKA. *This appeal must, for these reasons, be dismissed.*

We would like to add two comments: (1) In our view, it is not necessary when giving particulars of a charge of riot or unlawful assembly to give particulars of common purpose and (2) we consider it advisable that cases of unlawful assembly and riot which very often involve difficult questions of law should be prosecuted by Crown Counsel and not be left to the conduct of a Police Sergeant. Almost every page of the record in this case contains discussions between counsel for the defence and the Court as to points of law and evidence; moreover it is unlikely that a law officer would have in this case filed an information containing particulars which were unnecessary, which lacked evidence to support them and which wasted the time of the Court.

[HALLINAN, C. J. and ZANNETIDES, J.]

(April 24, 1956)

KYRIACOS ELIA MALLIS of Nicosia, *Appellant,*

v.

THE POLICE, *Respondents.*

NICOS GEORGHIOU MESHIOS of Nicosia, *Appellant,*

v.

THE POLICE, *Respondents.*
(*Criminal Appeals Nos. 2043 and 2044*)

Mens rea — Emergency Powers (Public Safety and Order) Regulations, 1955, Regulation 74.

The appellant was charged under Regulation 74 of the Emergency Powers (Public Safety and Order) Regulations, 1955, which makes it an offence to give false evidence but does not state that guilty knowledge is an element

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