

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

1956
April 9
GALATIS PETROU
AND OTHERS
v.
THE POLICE

1956
April 24
KYRIACOS
ELIA MALLIS
v.
THE POLICE
NICOS
GEORGHIOU
MESHIOS
v.
THE POLICE

1956
April 24

KYRIACOS
ELIA MALLIS

v.

THE POLICE

NICOS
GEORGHIOU
MESHIOS

v.

THE POLICE

in the offence. The trial Judge held that it was only necessary for the Crown to prove that false evidence had been given before a competent Court. The appellant was convicted.

Upon appeal,

Held: Having regard to the nature of the offence and the difficulty of determining the object and scope of the regulation, it could not be inferred that the regulation was intended to dispense with *mens rea* as an element in the offence.

Conviction and sentence set aside.

Reg. v. Aristodhimos Michael alias Tsaoushis (ante page 100) referred to.

Appeals allowed.

Appeals by accused from the judgment of the Special Court of Nicosia (Case Nos. 38/56 and 37 A/56).

Stelios Pavlides, Q.C., with R. Lyssiotis for the appellants.

R. Gray, Crown Counsel, for the respondents.

The judgment of this Court was delivered by:

HALLINAN, C.J.: The appellants in each of these cases were charged with giving false evidence on the 17th December last at the trial of one Pantazis before the Special Court of Nicosia. The charge was laid under Regulation 74 of the Emergency Powers (Public Safety and Order) Regulations, 1955, which provides as follows:

"If any person shall give false evidence in any trial for an offence against these Regulations he shall be guilty of an offence and shall be triable and punishable upon conviction by the Court before which he has given such false evidence or before any other Court with imprisonment for five years or for such lesser term as the Court may see fit to impose."

The learned trial Judge convicted both the appellants and in giving his reasons for his decision he stated that he had compared Regulation 74 with Section 107 of the Criminal Code which contains a definition of "perjury". He came to the conclusion, to use his own words: "That all that was required was to prove that false evidence had been given before a competent Court". It would appear that the trial Judge did not consider that guilty knowledge or materiality were necessary elements in a charge under Regulation 74 as they are in a charge of perjury under the Criminal Code and at common law; and the point which falls for decision on these appeals is whether the trial Court was right in so construing article 74.

The prosecution submitted (and it was accepted by the trial Court) that the omission of any reference to intent or guilty knowledge or the materiality of the false

evidence in the regulation must be construed as implying an intent by the authority making the regulations to dispense with these elements in a charge under the regulations. In Criminal Appeal 2029* decided by this Court on the 9th March, we have considered the circumstances in which the general rule that *mens rea* must be presumed to be a necessary element in a crime can be held not to apply. It is true that the definition of "perjury" in section 107 of the Criminal Code includes the words "knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding". But we do not consider that the omission of such words in Regulation 74 implies that guilty knowledge and materiality are not elements in a charge under regulation 74. We are not dealing with a minor offence carrying a relatively light punishment. It is difficult to believe that the authority making the regulations would wish to dispense with the element of *mens rea* which is such a particularly important element in any offence which seeks to punish the culpable giving of false evidence; and it is hardly credible that the regulation would be aimed against the giving of false evidence which was not material in the case. In times of emergency it is certainly necessary to create new offences when law and order are threatened, but it is not easy to see why it should be necessary in the interests of law and order to dispense with the elements of guilty knowledge and materiality in the law of perjury. One of the reasons given by judicial authority for implying when such words as "knowingly" or "wilfully" are omitted that it was intended to dispense with the element of guilty knowledge is that the statute which is being construed has been drawn with the care and precision usual in modern statutes. It is impossible to say that Regulation 74 has been drawn with care and precision, and indeed it is difficult to see what are its objects and scope. Counsel have been unable to refer us to any similar regulation in any emergency legislation enacted in the United Kingdom. If the regulation were to bear the construction put on it by the trial Court every witness would feel himself in jeopardy if he in good faith should make a statement which was not accurate; such a state of affairs is not in the best interests of the community or of the administration of justice.

For these reasons we are unable to imply from the wording of regulation 74 that it was intended to dispense with the elements *mens rea* and materiality in proving a charge under that regulation.

Since we are unable to find that the trial Court on a proper direction as to the elements of the offence would inevitably have come to the same conclusion, these appeals must be allowed, and, in both cases, the convictions and sentences are set aside.

* See page 100 of this volume.

1956
April 24
—
KYRIACOS
ELIA MALLIS
1.
THE POLICE
NICOS
GEORGHIOU
MESHIOS
1.
THE POLICE