[HALLINAN, C. J. and ZEKIA, J.]
(January 7, 1956)

1. EMIN HUSSEIN *alias* TOURKOMICHALOS of Famagusta,
2. CHRISTINA MICHAEL of Famagusta, *Appellants*,

v.

THE POLICE *Respondents.*

(Criminal Appeal No. 2012)

Criminal Law—Evidence of system where irrelevant—Proviso to Criminal Procedure Law, section 142 (1) (b) applied

The appellants were convicted on various counts for conspiracy to defile a female and, under section 152 of the Criminal Code, of procuring a female to have carnal connection by false pretences or by threats. Corroboration is necessary under section 152. Evidence was led of the appellants procuring three females by false pretences or threats on different occasions. The trial Court held that the system practised by the appellants provided corroboration, the evidence on one count providing corroboration of another count.

Upon appeal,

Held: Evidence of the act charged in one count could not be corroborated by evidence of acts on other occasions, for this evidence of system did not in the present case tend to show that the offence charged was designed or accidental or likely to rebut a defence otherwise open to the accused.

Convictions on all counts set aside except on one count where the proviso to Criminal Procedure Law, section 142 (1) (b) applied there being no substantial miscarriage of justice.

Appeal by accused from the judgment of the District Court of Famagusta (Case No. 3539/55).

M. A. Triantafyllides with *U. Emin* for the appellants.

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

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

HALLINAN, C. J.: Both the accused in this case were charged on 12 counts with conspiracy to defile a female, with procuring a female to have carnal connection by false pretences or by threats and with managing a brothel.

Both the accused were convicted on the 1st count under s. 159 of the Criminal Code for conspiring to induce the female Androulla Vryonidou by false pretences to permit a person unknown to the prosecution to have unlawful carnal knowledge of her.

There is undoubtedly on the record evidence upon which the Court could have found both accused guilty of conspiracy on this count; it had been stated in the particulars that Androulla had been induced by the first appellant to permit him and an unknown person to have unlawful carnal knowledge of her. There is, however, no evidence that the first appellant conspired with the second appellant so that Androulla be induced by false pretences to be carnally known to a person unknown to the prosecution.

Androulla's evidence is that the 1st appellant did induce her by false pretences to be carnally known by an unknown person; but neither Androulla nor any other witness states that the 2nd appellant conspired with the 1st appellant to do this; since there must be at least two parties to a conspiracy the charge of conspiracy on this count must fail and the conviction and sentence be set aside.

Both accused were also convicted on three other counts under section 152 of the Criminal Code in that by false pretences they procured on one occasion the woman Androulla and on another occasion the woman Panayiota Perdiki to have unlawful carnal connection with the first accused; and on yet another occasion by threats they procured a woman called Photini Anastassiou to have such carnal connection. Under the proviso to this section a person cannot be convicted on the evidence of one witness unless that witness is corroborated in some material particular by evidence implicating the accused.

The woman Androulla gave evidence that the 1st appellant had invited her to his house; there he pretended that he could bring her lover back or procure a lover for her by magic. Part of the hocus pocus in which he engaged included the putting of zinc into what he pretended was water and then making it bubble. No doubt this "water" was the hydrochloric acid later found in his house by the Police. He also pretended that for the magic to work the girl had to lie with another man or with the 1st appellant himself.

It is the evidence of the second woman Panayiota Perdiki that on another and separate occasion the 1st appellant had invited her to his house and had pretended to exercise similar magical powers and finally had sexual intercourse with her upon the same pretence as that made to Androulla.

The third victim, Photini Anastassi, also gave evidence that the 1st appellant purported to exercise magic and of his having carnal knowledge of her by similar false pretences. She also said that he had made her sign a paper containing some obscene words and had later threatened to show this paper to her relatives and other

people unless she continued to have sexual intercourse with him; and that under this and other threats she did so. On the 11th count which relates to the offence committed on Photini Anastassi, the appellants were found guilty of having procured her to have unlawful carnal knowledge with the 1st appellant by this threat of communicating the indecent document which she had signed to her relatives and other persons.

The learned President considered that the evidence corroborating each offence under section 152 was to be found "in the system practised by the accused as established by the evidence" which in the words of the learned President "in my opinion is overwhelming corroboration supporting the evidence of the main witnesses in the different counts".

It has been submitted by the appellant that the evidence given in support of one count in this case is not admissible as evidence of "system" so as to corroborate the prosecution's evidence on another count. This raises a difficult question of law which has been discussed in a long line of cases from the case of *Makin* v. *The Attorney-General for New South Wales* (1894), A.C. 57, to the recent case of *Frank Herbert Harris* 36, Criminal Appeal Reports, 39, which was decided by the House of Lords. The principle in Makin's case as laid down by Lord Herschell, L.C., is as follows:

> "It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused."

Evidence of similar acts on occasions other than those specified in the charge are often led to show intention or to negative accident or to rebut a defence which would otherwise be open to the accused; but concerning these similar acts Lord Simon in his judgment in Harris's case has this to say:

> "It is, of course, clear that evidence of "similar facts" cannot in any case be admissible to support an accusation against the accused unless they are connected in some relevant way with the accused

and with his participation in the crime: ... It is the fact that he was involved in the other occurrences which may negative the inference of accident or establish his *mens rea* by showing "system", or, again, the other occurrences may sometimes assist to prove his identity, as, for instance, in *Perkins* v. *Jeffery*".

The case of *Perkins* v. *Jeffery*, 1915 (2) K.B. 702, was a case of indecent exposure. Jeffery had indecently exposed himself to a certain female, a miss T. He was asked whether he denied exposing himself to the same lady on a previous occasion and he replied, "I do not deny it". The prosecution also wished to call witnesses to show that the respondent had been guilty of indecently exposing himself to other females on other occasions. Upon a Case Stated it was held that the evidence of his exposure to Miss T. on a previous occasion was properly admitted for the purpose of showing that she was not mistaken in her identification and it was done wilfully and not accidentally and that it was done with intent to insult her. But with regard to the evidence of other witnesses as to indecent exposure on other occasions Avory J. at p. 707 states:

> "The dates of the other occasions are not before the Court, and unless it appeared clearly that the defence that the act was not done wilfully or with intent to insult a female was going to be relied upon, and that the other occasions were sufficiently proximate to the alleged offence to show a systematic course of conduct, we think the evidence should not be admitted".

Avory J. then cites Stephen's Digest of the Law of Evidence, 8th Edition, art. 12:

> "When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is deemed to be relevant".

Avory J. then continues:

> "But it is, we think, open to doubt whether evidence is admissible to prove a "system or course of conduct" unless it is relevant to negative accident or mistake, or to prove a particular intention".

In Harris's case the appellant, a police officer, was indicted on eight counts all of which charged him with office breaking and larceny on various dates.

> "The evidence disclosed in the depositions with regard to the last count was that, after a burglar alarm had rung at the premises, two detectives had seen the appellant at the end of a narrow passage near the premises, that when they waved to him

he took no notice of them, that a few moments later he arrived at the premises looking pale and agitated, having passed a coalbin in which the stolen property was subsequently found. With regard to the first seven counts the evidence did not disclose the appellant's presence at or near the premises, but showed that he was on duty in the neighbouring market on every occasion, that neither he nor any other officer on duty had seen anyone who might have been the thief, and that each of the offences displayed certain similar features".

Considering these acts Lord Simon in his speech at page 59 states:

> "The learned Judge, having decided that the eight counts should be tried together, did not warn the jury that the evidence called in support of the earlier counts did not in itself provide confirmation of the last charge";

on these grounds Harris's conviction was quashed.

Upon a full consideration of the decided cases we are of the opinion that the evidence of system in the present case which was relied on to corroborate each of the convictions under section 152 consisted of similar acts on other occasions which were not made relevant by tending to show that the offence charged was designed or accidental or likely to rebut a defence otherwise open to the accused.

It remains to be determined whether the conviction under section 152 should be quashed or whether this Court should apply the proviso to section 142 (1) (b) of the Criminal Procedure Law, that is to say, whether, despite the misdirection of the trial Court as to corroboration, there was no substantial miscarriage of justice. In the words of Lord Simon in Harris's case at p. 60 "If it could be stated that a reasonable jury would, if properly directed, on the evidence properly admissible without doubt, have convicted ... the proviso should be applied". We may say at once that there was no other evidence to corroborate the evidence of Photini Anastassiou as to the appellant procuring her by threats to have carnal knowledge of the 1st appellant. The conviction and sentence on the 11th count must therefore be set aside.

There is, however, considerable evidence upon which the trial Court could have relied as corroborating the evidence of Androulla on the 4th count and of Panayiota Perdiki on the 6th count. Articles were found in the possession of the appellants such as a piece of zinc and

1956
Jan 7

EMIN HUSSEIN
ALIAS
TOURKOMICHALOS
AND ANOTHER
v.
THE POLICE

some hydrochloric acid which corroborate this woman's story as to the hocus pocus of magic which he worked on them. The witness Kyriacos Michael (6th prosecution witness) stated that the 1st appellant had suggested introducing to him a girl to whom he could get married. He states: "On one occasion he (the 1st appellant) stated that he knew a certain Androulla to whom I could get married. He said, "You can come to my house to meet her". The following day accused brought with him to the P.W.D. yard witness 2 and he said that that was the girl about whom he had spoken." Joseph Poutros, 8th prosecution witness, said: "Few days later accused 1 came up to me again and told me that he could do magic and he possessed supernatural powers. I took this as a joke and did not pay attention. He said he could take to his house any woman". This witness also said that the first appellant had said that he could "turn the water into acid and make it foam". The trial Court accepted both the evidence of Kyriacos Michael and Poutros.

Although we are unable to say this evidence is sufficient for us to say that there was no substantial miscarriage of justice in convicting the appellant on the 6th count, that is, the charge relating to Panayiota Perdiki, we consider that properly directed a reasonable jury would have without doubt convicted both the appellants on the 4th count which relates to the offence committed on Androulla. *The conviction of the appellants on all counts except the 4th count must be quashed. We see no reason why the sentence on each appellant in respect of the 4th count should be disturbed. Sentences to run from date of conviction.*

1956
Jan. 7

PANAYIOTIS S.
MYRIANTHOUSIS
v.
DESPINA
PETROU

[HALLINAN, C.J. and ZEKIA, J.]
(January 7, 1956)

PANAYIOTIS STYLIANOU MYRIANTHOUSIS
alias
TAKIS STYLIANOU MYRIANTHOUSIS, *Appellant*,

v.

DESPINA PETROU, *Respondent.*

(*Civil Appeal No. 4146*)

Contract — Breach of promise — Minor not competent — Contract void—Section 11 of Contract Law—Common law excluded — Custom not a source of law usage repugnant to statute——Recognition of contract by Greek Orthodox Tribunal unavailing.

The plaintiff sued for breach of promise. At the time of the promise she was under 18. Section 11 of the Contract Law specified the persons competent to contract and includes every person who "has attained the age of eighteen years."