[BOURKE C.J., ZEKIA AND ZANNETIDES JJ.]

1957
June 24,
25 & 28

REGINA

v.

MICHALAKIS CHRISTOU ROSSIDES.

(*Criminal Appeal No.* 2103).

REGINA
v.
MICHALAKIS
CHRISTOU
ROSSIDES.

Criminal Law—Murder—Corpus delicti—Compulsion—No defence —Criminal Code, Cap. 13, *section* 16.

Evidence in criminal cases—Admissibility—Documents—Regimental dental record—Inadmissible as evidence—Admissibility of E.O.K.A. leaflet—Confessions—Corroboration—Statements to substantial truth—Sufficiency of evidence.

R. S., a private soldier, disappeared from his Army quarters on the 17th April, 1956, and on the 5th February, 1957, the body of a man was found, dressed in civilian clothes, buried in a field about 4½ miles from Lyssi village. The body was in an advanced state of decomposition which was consistent with burial in May, 1956. The cause of death was either a heavy blow on the head by some largish instrument, or one of two bullets extracted fron. the body.

The appellant was arrested on the 21st March, 1957, and on the following day he confessed to the killing of R. S. Two weeks later, on being formally charged with the murder, he again confessed to the crime. The trial Judge found that these confessions were free and voluntary.

In the course of the confessions the appellant admitted that he was a member of E.O.K.A., the terrorist organisation, that R. S. was brought to his (appellant's) place at Lyssi village late in April, 1956, that the killing and burial took place on the 11th May, 1956, in a field about two miles away from Lyssi, that the appellant, under threat of being killed himself by one Z., shot R. S. who was wearing civilian clothes at the time, and that R. S. was hit by a shovel, though appellant appeared to have some doubts whether the blow was inflicted by Z. and another man when the deceased was put into the grave.

At the trial the Judge admitted the following evidence led by the prosecution: (i) a "Dental Record Card" produced from military custody as the dental record card relating to R. S., in order to prove the identity of the body; and (ii) leaflets purporting to be issued by E.O.K.A. and distributed on the 11th and 29th May, 1956, stating that R. S. had been the prisoner of E.O.K.A. and that he was executed on the 10th May. These leaflets were alleged to be admissible in evidence as affording independent evidence of the death of R. S.

The appellant was found guilty of the murder of R. S. On appeal,

Held: (1) that the dental record card in itself was not evidence of the truth of its contents and was inadmissible.

Pettit v. *Lilley* (1946) 1 All E.R., 593 applied.

(2) That the leaflets purporting to be issued by E.O.K.A. were inadmissible.

Karaolides v. *The Queen* (1956) 21 C.L.R. 5 applied.

(3) That the trial Judge correctly decided the question as to whether the confessions of the appellant could be relied upon as statements to the substantial truth.

(4) That, having regard to the findings of the trial Judge, the appellant could not avail himself of the defence of compulsion provided for in section 16 of the Criminal Code, Cap. 13.

(5) That, apart from the inadmissible evidence (viz. that of the dental record card and the E.O.K.A. leaflets), there was sufficient evidence reasonably to establish the *corpus delicti*, and that the appellant was guilty of the murder charged.

Appeal dismissed.

[**Editor's Note**: The Judicial Committee of the Privy Council dismissed the petition of the accused for special leave to appeal from the judgment of the Supreme Court of Cyprus: *Rossides* v. *The Queen* (1957), *Times*, 3rd October.]

Cases referred to:

(1) *Pettit* v. *Lilley* (1946) 1 All E.R. 593.

(2) *Karaolides* v. *The Queen* (1956) 21 C.L.R. 5, P.C.

(3) *Georghallas and another* v. *The Police*, Cr. App. No. 2011 (unreported), decided on November 12, 1955.

(4) *R.* v. *Lambrou* (1957), reported at page 96 of this volume.

(5) *R.* v. *Sampson Georghiades* (No. 2) (1957), reported at page 128 of this volume.

Appeal against conviction.

The appellant was convicted at the Special Court sitting in Nicosia (Case No. 1263/57) on the 6th June, 1957, of the murder of Private Ronald Shilton, and was sentenced by John J. to death.

M. Triantafyllides and *G. Clerides* for the appellant.

H. Gosling for the Crown.

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

BOURKE C.J. : The appellant was convicted by the Special Court of the murder of a private soldier named Ronald Shilton and was sentenced to death.

On the 17th April, 1956, Private Ronald Shilton of the Royal Leicestershire Regiment appeared on a charge before his Company Commander at about 9.45 a.m. He was remanded for Commanding Officer's orders and instructed to parade outside "A" Company's Office at 1.55 p.m. He failed to report and upon a search being carried out in the unit's lines and those of neighbouring units no trace of him was found. Warrant Officer Benham testified that he paraded Private Shilton at 9.45 a.m. and had not seen him again since that occasion on the 17th April, 1956.

Acting upon information some soldiers were put to dig in February, 1957, in a field about 1½ miles from Prastio village lying to the North and about 4½ miles from Lyssi village to the South-West. After digging for a few days, on the 5th February the body of a man was found dressed in civilian clothes and buried about 3½ feet below the surface of the ground. The body was in an advanced state of decomposition which was consistent with burial in May, 1956. Death had resulted from violence. There was an extensive comminuted fracture of the skull leaving a gap 14 cm: X 6 cm. caused by a heavy blow by some largish instrument. Two bullets of differing calibre were extracted from the body ; one was found lodged at the top of the jaw behind the right ear and the other was taken from the right side of the chest. Such was the state of the body that Lt. Col. Buckland, R.A.M.C., who carried out the post mortem, could not be definite whether the immediate cause of death was the blow or a bullet. The fracture of the skull if inflicted while the man was alive would have caused death—it would not be possible to survive such an injury ; but it is possible that death was inflicted by a bullet.

The appellant was arrested on the 21.3.1957 and on the next day he confessed to the killing of Ronald Shilton (Exhibit 8) ; on being formally charged with the murder on 4.4.1957 he again confessed to the crime (Exhibit 11). The trial Judge was satisfied and found as a fact that these confessions were given voluntarily. In the course of the confessions the appellant recounted that in April, 1955, he joined E.O.K.A., the terrorist organisation operating in Cyprus. Late in April, 1956, two persons known to him by the code names Miltiades and Zaimis brought Ronald Shilton to him at his place at Lyssi. On instructions he kept Shilton with him and they became close friends. Shilton was dressed in civilian clothes. The appellant

thought that it was the 11th May, 1956, when the same two persons came to his place at night in a van and took Shilton with them accompanied by the appellant. They went to a field, in the estimate of the appellant about two miles from Lyssi, where there was an open "grave." Miltiades and Zaimis had two pistols and the latter handed the appellant a pistol and ordered him to execute Shilton. In the first statement (Exhibit 8) the appellant said that he obeyed the order, asked Shilton to forgive him, and shot him dead. In the second statement (Exhibit 11) he said that he shot Shilton under threat of being killed himself by Zaimis if he failed to carry out the order and this was accepted by the Judge of trial who was satisfied that the confessions went to the truth of what occurred. Zaimis and Miltiades then threw the body in the grave. The appellant was so upset by what he had done that he was unable to take part in "the job" of filling in the grave. At the conclusion of the first confession the appellant said "Perhaps they hit him with the shovel when they put him in the hole." The element of doubt so expressed goes, we think, to the stage of events that the unfortunate man was hit with a shovel; if the appellant meant to convey that he was doubtful and did not know whether Shilton was struck at all with a shovel, it is difficult to understand why the remark should have been made. There is no suggestion that it was made in response to any question by the Police Officer Leslie Dolphin who recorded the statement. The trial Judge was satisfied that the injury to the skull of the body dug up on the 5th February, 1957, could have been caused by the blow of a shovel.

It will be observed that there is a considerable body of material going to corroborate the confessions and to permit the inference that the body disinterred on the 5th February, 1957, was none other than that of Ronald Shilton. There is the fact of the disappearance of Shilton on the 17th April, 1956, from his Army quarters and the statement in the confession that he was brought to the appellant's place at Lyssi village late in April, 1956. The medical evidence established that the condition of the body dug up in February, 1957, was consistent with its burial in early May, 1956; the date given in the confession for the killing and burial is the 11th May, 1956. The body was found in a field 4½ miles from Lyssi and the appellant confessed to the killing and burial taking place in a field about two miles away from Lyssi. The difference in estimation of distance is readily understandable. The appellant confessed to the shooting of Shilton and bullets were found in the body. The body was dressed in civilian clothes and the confessions speak of Shilton wearing civilian clothes. The body had a very severe injury to the head which on the medical evidence could have been caused by a heavy blow by some largish instrument. A shovel

answers such description and the appellant mentioned that Shilton was hit by a shovel though he appears to have some doubts whether the blow was inflicted when the man was put into the grave.

The prosecution sought to bring the matter even further and led evidence to show that the condition of the teeth in the jaw of the body corresponded exactly with the state of the teeth as revealed by an official Dental Record Card (Exhibit 6) produced from Military custody as the Dental Record Card relating to Private Ronald Shilton. It appears that the Dental Officers responsible for the dental treatment given to Shilton and for filling in the Record Card were not available but could have been found " by careful inquiry ". The Record Card in itself was not evidence of the truth of its contents (and see *Pettit* v. *Lilley* (1946) 1 All E.R. 593) and, as is now conceded by the Crown, was not admissible in evidence.

Evidence was also admitted at the trial, without objection being taken, of the contents of leaflets (Exhibits 12, 13 and 14) distributed on the 11th and 29th May, 1956, addressed to British Soldiers and purporting to be issued by E.O.K.A. The leaflet distributed on the 11th May (Exhibit 12) informs that Corporal Ronnie Shilton was the prisoner of E.O.K.A. since April, 1956, and that he was executed on 10th May by being hanged " as a necessary reprisal for the judicial murder " of two persons named. The leaflet distributed on the 29th May (Exhibit 13) refers to the former announcement of the execution of Ronnie Shilton and speaks of " the futile attempt of the Military Dictatorship to challenge the truth of our statement ". The leaflet proceeds to give detailed particulars of Shilton and goes on to state—" We may be credited with sufficient intelligence not to make statements which can be proved untrue by the 'reappearance' of those whom we mention as dead ".

It is a ground of appeal that these leaflets were wrongly admitted as evidence and reference has been made to the decision of the Privy Council in *Karaolides* v. *The Queen* (1956) 21 C.L.R. 5, P.C., in which a number of pamphlets purporting to be issued by E.O.K.A. were held inadmissible in evidence for the purpose of connecting the appellant with the terrorist activities of a certain part of the population of Cyprus. It is maintained with some apparent diffidence on behalf of the Crown that the leaflets in the instant case are admissible in evidence as affording independent evidence of the death of Shilton ; the difficulty, however, is recognised that there is no direct evidence that the leaflets did in fact emanate from E.O.K.A. The argument pursued and the attempt to distinguish this case from *Karaolides*' case (*supra*) is linked to the admission of the appellant in his confession that he was a member of

E.O.K.A. It is argued that it is a well-known and notorious fact, as of course it is, that this terrorist organisation follows a practice of distributing leaflets and pamphlets in the furtherance of its object, which is equally notorious and already judicially noticed by this Court as being to change the sovereignty of the Government of the Colony by force; (*Georghallas and Anor.* v. *The Police*, Cr. App. No. 2011).* It is submitted that notice may validly be taken of the existence of a conspiracy among the members of E.O.K.A. to achieve its subversive and illegal aims and that since the appellant is admittedly a member of E.O.K.A., and the declarations contained in the leaflets in question are in furtherance of the common design of members of the same conspiracy, they can properly be given in evidence against the appellant as a co-conspirator. At first sight the argument may seem attractive but we think that its primary weakness is that fairly conceded, namely, that the most that can be said about these particular leaflets is that they merely purport to contain the declarations of "E.O.K.A. the Leader Digenis." It may be thought that at this time of day there can be no doubt as to their source, but in seeking to establish a charge of this kind in a Court of law we are of the opinion that it is a matter of proof, which is lacking. Without examining the problem any further we think that the safer view to adopt is that which turns in favour of the appellant, namely, that the leaflets do not constitute admissible evidence.

Three grounds of appeal remain on points of law. It is said in the first place that the trial Court erred in putting the appellant to his election when determining the particular issues as to whether the confessions were voluntary or not and that such error operated to the prejudice of the appellant. Where the prejudice lay there has been no attempt to explain. It is evident that at all appropriate stages of the trial the appellant was given the opportunity of going into the box and testifying as a witness on his own behalf, an opportunity of which at no time did he avail himself. It is difficult to understand why the learned Judge, in view of the decision of this Court in *R.* v. *Lambrou* (1957),† should go out of his way to explain to the appellant "his rights on this issue" as to the voluntary nature of the statements, when the appellant was defended by learned counsel well aware of the right to call the appellant as a witness. On the determination of each objection to the admissibility of the confessions the appellant chose to make an unsworn statement from the dock. There is no suggestion of any pressure being brought to bear by the Judge and the record indicates that as regards the second confession the appellant adopted the course he

* Unreported (decided on November 12, 1955).

† See page 96 *ante*.

did after consultation with his counsel, who requested and were accorded a short adjournment to advise him. There is no substance whatsoever in this ground of appeal.

It is contended that in accepting the account given by the appellant in his second confession that in shooting at Shilton he acted under compulsion, the learned Judge wrongly applied section 16 of the Criminal Code (Cap. 13), which provides that compulsion within the meaning of the section shall constitute a defence except in the case of murder and offences against the State punishable with death. Reference has been made to the corresponding section in the Indian Penal Code and to Ratanlal's commentary thereon (18th Edn, pp. 192—3). It is submitted that compulsion would be a good defence despite the words " except murder " in section 16 where an accused is guilty of abetting the murder. Having regard to the findings of the trial Court we entirely fail to appreciate how this argument, if otherwise sound, can possibly avail the appellant.

The final ground of appeal on law, which questions the validity of the sentence of death passed, was not argued in view of the decision of this Court in *R.* v. *Sampson Georghiades* (No. 2)* where it was held that the same point was not well taken.

Turning to the notice of appeal on grounds of fact, it is a ground that " the trial Court on the face of the evidence adduced was wrong to find that Exhibits 8 and 11 (the confessions) were voluntary and admissible in evidence". The learned Judge was satisfied beyond any doubt that the confessions were made freely and voluntarily. There was no misdirection nor is there any suggestion of misdirection. On the evidence and having regard to the view he plainly took of it, the Judge was fully entitled to arrive at the conclusions he did and this Court is bound by such findings of fact. We find no substance either in the grounds alleged that a wrong and prejudicial view was taken by the learned Judge of the circumstances that the appellant did not elect to testify in his defence or that the trial Judge failed properly to approach and resolve the question as to whether the confessions of the appellant could be relied upon as statements to the substantial truth.

As to the remaining grounds of appeal, the Dental Record Card (Exhibit 6) and the leaflets (Exhibits 12, 13 and 14) have been held to be inadmissible in evidence, but this Court is of the opinion that apart from such inadmissible evidence there was sufficient evidence reasonably to establish the *corpus delicti* and that the appellant was guilty of the murder of Private Ronald Shilton ; we are of the view that the trial Judge would or must inevitably have arrived at the same verdict, if this evidence had not been admitted.

Appeal dismissed.

* See page 128 *ante*.