

REGINA

v.

COSTAS MICHAEL AND ANOTHER.

(Criminal Appeal No. 2118).

REGINA
v.
COSTAS
MICHAEL
AND
ANOTHER.

Criminal Procedure—Appeal against sentence fixed by law—Criminal Procedure Law, Cap. 14, section 130 (1)—Trial Judge to sentence upon each count.

Criminal Procedure—Charge—Form of Information—Criminal Procedure Rules, Appendix A, Criminal Form No. 30, precedent No. (10)—Based on section 20 of Criminal Code—Form of charge under Emergency Regulations.

Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 4) 1957, Regulation 72—Charge—Form of charge.

The two appellants were convicted on four counts of offences involving the carrying of a firearm, grenades, ammunition and explosive articles contrary, respectively, to Regulations 52 (c), 52A (c), 52A (c) and 53 (b) of the Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 4) 1957. In each count there was a reference to Regulation 72 of the same Regulations, which contained provisions as to parties to offences. The offence charged in the first count of carrying a firearm entailed the capital penalty, while the offence alleged in each of the three remaining counts carried the punishment of imprisonment. The appellants were sentenced to death but no sentence of imprisonment was passed.

The first ground of appeal argued on behalf of the appellants was that the sentence was bad and illegal in that the appellants having been found guilty on four counts a general sentence of death was passed without specifying the particular count on which it was passed, and in regard to three of the counts no death sentence could be passed at all.

The second ground of appeal was that the information was bad in that the particulars of the offences alleged in the counts gave rise to uncertainty and did not afford sufficient or reasonable notice to each appellant as to what it was alleged he had done or what act he had committed in connection with the charges.

Held : (1) that, having regard to the provisions of section 130 (1) of the Criminal Procedure Law, Cap. 14, the first ground of appeal was not open to the appellants as no leave was given by a Judge of the Supreme Court to appeal against sentence, and, in any case, the sentence provided under the first count was one fixed by law, *i.e.* the death penalty ;

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(2) view expressed that it would be proper for the trial Judge to proceed to sentence upon each count under which a conviction had been entered; and that this applied equally in those cases where convictions had been entered for more than one capital offence under counts properly joined on the one information;

(3) that the charges were framed in the form they were laid in reliance upon the provisions of Regulation 72 (which provided that a person to whom the regulation referred could be charged as a principal offender with the actual commission of the offence), and that in any event there was no prejudice suffered; that the case being made against the appellants was quite apparent from the depositions; and that it was not necessary that each count should have followed the lines of precedent No. (10) of the "Forms of Information" appearing under Criminal Form No. 30 in Appendix A of the Criminal Procedure Rules (made under the provisions of Cap. 14).

Appeals dismissed.

Appeals against conviction and sentence.

The appellants were convicted at the Special Court of Nicosia on the 30th August, 1957 (Case No. 1808/57) on four counts for the offences of carrying a firearm, grenades, ammunition and explosives, contrary to Regulations 52 (c), 52A (c), 52A (c) and 53 (b) respectively, and Regulation 72, of the Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 4) 1957, and were sentenced by John J. to death.

Stelios Pavlides, Q.C., and L. Clerides for the appellants.

H. Gosling for the Crown.

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

BOURKE C.J., said on the points referred to in the headnote (on which alone the case is now reported):—

The two appellants Costas Michael and Demetrakis Christou were convicted by the Special Court on four counts of offences involving the carrying of a firearm, grenades, ammunition and explosive articles contrary, respectively, to Regulations 52 (c), 52A (c), 52A (c) and 53 (b) of the Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 4) 1957. In each count there is a reference to Regulation 72 of the same Regulations, which contains provisions as to parties to offences. The offence charged in the first count of carrying a firearm, namely, a Thompson sub-machine carbine, entailed the capital penalty while the offence alleged in each of the three remaining counts carried the punishment of imprisonment.

The appellants were sentenced to death but no sentence of imprisonment was passed. The ground of appeal has been put forward on behalf of both appellants that the sentence is bad and illegal in that the appellants having been found guilty on four counts, a general sentence of death was passed without specifying the particular count on which it was passed and in regard to three of the counts no death sentence could be passed at all. The point was taken on behalf of the Crown that this was an appeal against sentence contained in the notices of appeal against conviction on questions of law. Having regard to the provisions of section 130 (1) of the Criminal Procedure Law, appeal against sentence only lies with leave of a Judge of the Supreme Court and there can be no appeal against sentence where it is one fixed by law. No such leave was given and in any case the sentence provided for the offence for which a conviction was entered under the first count was one fixed by law. This ground of appeal was therefore not open to the appellants.

We think it is quite evident that this objection must be upheld; the provisions of section 130 (1) (c) are definite and clear. We do not consider that there is any room for uncertainty. The only offence carrying the capital penalty of which the appellants were convicted was that alleged in the first count, and in passing sentence of death the learned Judge was obviously acting in accordance with law to inflict the penalty provided for the offence charged under the first count. Having done so it may have seemed unnecessary to him to proceed to sentence on the three other counts or he may have refrained through a sense of the fitness of things in the circumstances. While appreciating the distastefulness of his task, we would, however, indicate our view that it is proper to proceed to sentence upon each count under which a conviction has been entered. Complications may ensue from a neglect to do so and such a course would obviate the necessity in certain circumstances of remitting a case for the passing of sentence. This equally applies in those cases where convictions have been entered for more than one capital offence under counts properly joined on the one information.

It is also raised as a ground of appeal by both appellants that the information was bad in that the particulars of the offences alleged in the counts gave rise to uncertainty and did not afford sufficient or reasonable notice to each appellant as to what it was alleged that he had done or what act he had committed in connection with the charges. The objection was taken at the outset of the trial and the learned Judge ruled that it was without substance. We are of the same opinion. Regulation 72 provides that a person to whom the regulation refers may be charged as a principal offender with the actual commission of the offence

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and it is plainly in reliance upon that provision that the charges have been framed in the form they were laid. In any event it may be said that there was no prejudice suffered nor has there been any suggestion of any real prejudice; the case being made against the appellants was quite apparent from the depositions. It has been submitted that each count should have followed the lines of precedent No. (10) of the "Forms of Information" appearing under Criminal Form No. 30 in Appendix A of the Criminal Procedure Rules. But that particular form is clearly based upon the special provision contained in section 20 of the Criminal Code under which a person who counsels or procures any other person to commit an offence may be charged either with himself committing the offence or with counselling or procuring its commission.

That disposes of the grounds of appeal raised on behalf of the appellant *Costas Michael (accused 1)*; the facts are not in dispute and there was ample evidence to support his convictions. The appeal of this appellant is therefore dismissed. The appeal of the second appellant on these two grounds also fails.

Appeals dismissed.