[BOURKE C.J. AND ZANNETIDES J.]

CHRISTOS KAPODISTRIA, *Appellant*,

v.

PETRAKIS A. PETRIDES, *Respondent.*

(*Criminal Appeal No.* 2120).

Criminal Procedure—Criminal Procedure Law, Cap. 14, *section* 87—*Trial of accused in his absence—Presence of accused necessary when charge serious—Warrant of arrest to issue.*

In *Niazi Ahmed* v. *The Police* (1952) 19 C.L.R. 127, at page 128, the Supreme Court expressed the opinion that "Courts of Summary Jurisdiction in exercising their power under section 87 of the Criminal Procedure Law to convict a person in his absence should not exercise that power where the charge involves the stigma of dishonesty and would be normally punishable by imprisonment rather than fine. We consider that in these circumstances Courts of Summary Jurisdiction should issue a Bench warrant and bring up the accused before determining the case."

Per curiam : "We would now go further and say that in any case of a serious nature which would be normally punishable by imprisonment rather than fine, Courts should not exercise a power to try the accused in his absence but should issue a warrant for his arrest in accordance with law to bring up the accused before determining the case."

Appeal allowed.

Convictions set aside.

Cases referred to :

Ahmed v. *The Police* (1952) 19 C.L.R. 127.

Appeal against conviction.

The appellant was convicted at the Special Court in Nicosia on the 11th September, 1957, of assault occasioning actual bodily harm and of common assault (Case No. 1582/57) for which he was sentenced by Ellison, Special Justice, to one year and 4 months' imprisonment respectively, both sentences to run concurrently.

L. Demetriades for the appellant.

A. C. Indianos for the respondent.

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

BOURKE C.J. : The appellant was convicted of two offences, namely, assault occasioning actual bodily harm to one Petrakis Petrides contrary to section 237 of the Criminal Code, and with common assault upon the same

person contrary to section 236 of the Criminal Code. He was sentenced to one year's imprisonment on the first count and to four months' imprisonment on the second count. The offence charged in the second count was, however, and as is fully conceded, clearly in the alternative.

The record of the proceedings is extremely sketchy and we would draw attention to the need for taking a clear and full note that will indicate what has transpired at a trial. The case came on for hearing on 1st July, 1957. There is no entry to show who appeared or whether the appellant was present. The only note on record for that date is—"Pleas both counts not guilty. Hearing fixed 12th July, 1957." We have before us the uncontradicted affidavits of the appellant and his advocate, Mr. Soteriades, who appeared at the trial, to the effect that though the appellant was present he was not arraigned in accordance with the provisions of section 61 of the Criminal Procedure Law, but his advocate was heard to plead to the charges. It was not a case in which any "special direction" had been given in the summons or to which the first proviso to section 44 (1) of the Criminal Procedure Law had been made to apply

There appears on the record for the date to which the case was adjourned for hearing, that is the 12th July, 1957, the entry—"Adj. sine die, in September if not before 15th July, 1957." It does not appear whether the parties were before the Court on that occasion, but presumably they were. The next entry was for the 11th September, 1957, and reads "Accused absent. Duly served. Court told Mr. Indianos (who appeared for the prosecutor) could proceed in case." Evidence was then heard for the prosecution, the appellant being tried in his absence. It appears that the appellant and his advocate attended the Court at 10 o'clock in the morning but judgment had then been pronounced. A protest was made and rejected and then the advocate for the defence was heard in mitigation of sentence.

Presumably in trying the case in the absence of the appellant the Court below purported to act under the provisions of section 87 (1) of the Criminal Procedure Law. It appears, however, and is not in dispute, that there was no summons issued or served upon the appellant requiring him to attend for trial on the 11th September, 1957. The advocates appearing for each side before this Court are agreed that what happened is that the Registrar of the Special Court telephoned to Mr. Indianos for the prosecution enquiring if the 11th September suited the parties. Mr. Indianos then wrote to the appellant's advocate informing him and the latter conveyed the information as to the agreed date for trial to his client, the appellant.

It seems to us that little or nothing has been done right in this case. The trial was not conducted in accordance with law and was a nullity. The appeal is allowed and the convictions and sentences set aside.

In the course of the argument our attention was drawn to the comment made by this Court at the conclusion of the judgment in *Niazi Ahmed* v. *Police*, 19 C.L.R., 127, 128, where it was said that, "Courts of Summary Jurisdiction in exercising their power under section 87 of the Criminal Procedure Law to convict a person in his absence should not exercise that power where the charge involves the stigma of dishonesty and would be normally punishable by imprisonment rather than fine. We consider that in these circumstances Courts of Summary Jurisdiction should issue a Bench warrant and bring up the accused before determining the case." We would now go further and say that in any case of a serious nature which would be normally punishable by imprisonment rather than fine, Courts should not exercise a power to try the accused in his absence but should issue a warrant for his arrest in accordance with law to bring up the accused before determining the case.

Appeal allowed.
Convictions set aside.