STAVROS CORNELIOU, *Appellant*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 2127).

Evidence in criminal cases—Confession—Dispute as to admissibility—Right of accused to give evidence—Procedure to be followed—Accused may give evidence before or after his witnesses—Discretion of Court—Criminal Procedure Law, Cap. 14, *section* 72 (1) (*d*).

On the trial of the issue of the voluntariness of a confession the trial Court was not bound as a matter of law to follow the procedure laid down in section 72 (1) (*d*) of the Criminal Procedure Law, Cap. 14; the time at which the evidence of the accused himself was to be received was in the discretion of the Court; and it was open to the Court, in the exercise of its discretion, to admit the accused to give evidence either before or after the evidence of his witnesses.

In the circumstances of this case the Court rightly ruled that if the accused wanted to give evidence on the issue of the voluntariness of his confession he would be admitted to do so provided he presented himself as the first witness and before the evidence of his witnesses.

Demetriades v. *The Queen* (1956) 21 C.L.R. 180; *R.* v. *Lambrou* at page 96 *ante*, referred to.

Appeal dismissed.

Cases referred to:

(1) *Demetriades* v. *The Queen* (1956) 21 C.L.R. 180.
(2) *R.* v. *Lambrou* at page 96 of this volume.
(3) *R.* v. *Crippen* (1911) 1 K.B. 157.
(4) *Wright* v. *Wilcox* 9 C.B. 650.

Appeal against conviction.

The appellant was convicted by the Special Court at Nicosia on the 19th September, 1957 (Case No. 1898/57), of the offence of publishing seditious documents, for which he was sentenced by Ellison, Special Justice, to 3 years' imprisonment and, also, of possessing seditious documents for which he was sentenced to 3 years' imprisonment, the sentences to run concurrently.

M. Triantafyllides for the appellant.
H. Gosling for the respondents.

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

ZEKIA J.: The appellant with another person were seen on the night of the 3rd September, 1957, walking together at Pendayia, the appellant pushing a bicycle

and his companion distributing leaflets by throwing them out on the ground every 3—5 yards. The soldiers who concealed themselves in the vicinity shouted to the two persons to halt but they escaped. On the same night the appellant and the person alleged to have been his companion were arrested and taken to the police station. L/Corporal Penton picked up three of these leaflets which have been exhibited in the Court.

The case against the appellant rested (*a*) on his being identified as the person with the bicycle by prosecution witnesses Corporals Roberts and Penton and (*b*) on his confession made to Police Sergeant Lambrou on the day following his arrest. The trial Judge was satisfied with the identification of the prisoner but it is conceded on both sides that unless the confession made by the accused to Sgt. Lambrou was accepted as evidence against the prisoner he could not properly be convicted of the offence he has been charged with, because his walking beside the person distributing seditious leaflets would not by itself be sufficient to establish his complicity in such a publication.

It was not seriously contested and, in our view, it could not be argued that there was anything wrong with the identification. As to the confession the submission made against the admissibility of the statement to the Sergeant was based mainly on three grounds : (1) The learned Judge misdirected himself as to the onus of proof in ascertaining the voluntariness of a confession ; (2) that he refused to allow the appellant to give evidence on the issue of the voluntariness of the confession and (3) he refused to adjourn the trial with a view to enable the defence to call a witness on the issue of the voluntariness of the confession.

The ruling of the Court touching the 1st and the 2nd grounds is as follows :

> " I do rule that the Prosecution has shown *prima facie* that the statement was properly taken and the statement voluntary. It was proved in a formal way as required by all the rules and persons present at the time if any were available and I think the Crown has discharged the duty that lies upon it to prove the voluntary nature of the statement. It is for the defence if they wish to show that the Crown evidence is untrue or not true beyond reasonable doubt. There is an onus in my view upon the defence at this particular state of the proceedings. With regard to the right claimed by the defence of calling witnesses in any order I would like to be referred to some authority on that matter. I certainly thought it was laid down that in a defence case an accused is the first witness. It is possible, I have not considered it, that there is some latitude in the matter, but, if so, I would like to know the authority."

This Court in *Demetriades' case*, (1956) 21 C.L.R. 180, and in *Lambrou's case*, at page 96 of this volume, dealt at adequate length with the procedure to be followed when dealing with the voluntariness of the confession and the so-called " trial within trial." We do not think we can usefully add to the statement of the law made on the subject in these two cases.

It is alleged that misdirection in Law exists in the passage quoted as well as in two other lengthy rulings made by the same Court at a later stage of the proceedings. Although we think that the learned Judge was not accurate in some of his statements, specially when taken in isolation, appearing in his rulings, nevertheless on the whole he did not misdirect himself on a point of substance. In other words, it appears to us that the trial was conducted quite fairly and an opportunity was given to the prisoner to give evidence and to call witnesses at the trial of the issue of the admissibility of the confession.

The trial Judge thought that the procedure prescribed in section 72 (1) (*d*) of the Criminal Procedure Law is applicable in trying the issue complained of. No doubt the Court under section 172 of the Criminal Procedure Law within the compass of the said law possesses discretionary power to regulate the course of the proceedings at a trial in any way which appears to him desirable. He was, therefore, perfectly entitled to rule that if the prisoner wanted to give evidence on the voluntariness of his confession he would have been allowed to do so provided he presents himself as the first witness after the evidence on the part of the prosecution closes.

In *Rex* v. *Crippen*, (1911) 1 K.B., 157, the following statement of the Law by Wilde, C.J. (*Wright* v. *Wilcox*, 9 C.B., 650) was commented upon :

> " The time at which the evidence is to be received must be in the discretion of the Judge. The exercise of that discretion being subject to the review of the Court."

The second part of the statement, however, was not approved and in page 158 it is stated :

> " There is no doubt the matter is one in the discretion of the Judge at the trial who is necessarily in a far better position to exercise it with much more ample means of knowledge as to whether the evidence can be fairly admitted or not than in the Court of Criminal Appeal."

Rex v. *Crippen* deals with the reception of rebutting evidence but as far as the exercise of discretion by the trial Judge is concerned it is not irrelevant to the point raised.

After the evidence of the prosecution was heard on the issue of the voluntariness of the confession and after Dr. Diomedes Issaias called by the defence was heard, an application was made on behalf of the prisoner to adjourn the trial with a view to summoning advocate Mr. Syllouris, who was down with influenza and could not attend to give evidence on that day. There was no affidavit attached as to the illness of the proposed witness and it does not appear that he was subpoenaed. Counsel stated that this witness visited the prisoner on the 6th September and he might depose as to a complaint made to him by the prisoner in custody. But he frankly added that he did not know what this witness was going to say. The trial Judge refused the application for adjournment on the ground that even if there was a complaint to this advocate by the prisoner, the latter did not come forward to support such a complaint and, therefore, he was unwilling to adjourn the hearing for the purpose of calling this witness. In the circumstances, we do not think that he was unjustified in his refusal to adjourn the case for fetching such a witness. The appellant in this case was given a chance to give evidence at the trial on the issue of admissibility of his statement confessing his complicity in the offence. He chose not to avail himself of the opportunity. He had a second chance, if he wished, at the close of the case for the prosecution to make a sworn statement in which he could go to the circumstances under which he made his statement but he refrained from doing so.

Although we are in agreement with the learned counsel that the trial Judge was not bound on a trial of the issue of admissibility of confession as a matter of law to follow section 72 (1) (*d*) and it was open to him in the exercise of his discretion to admit the prisoner to give evidence after the evidence of his witnesses yet, in the circumstances of this case, the course adopted was the only reasonable one open to the trial Judge. There was no miscarriage of justice and the appeal, therefore, fails. We do not, on the other hand, find adequate reason to interfere with the sentence imposed.

The appeal is, therefore, dismissed. Sentence to run from the date of conviction.

Appeal dismissed.