1957
March 26

REGINA
v.
SHEVKI
REDJEB.

REGINA,

v.

SHEVKI REDJEB.

(*Criminal Appeal No.* 2088).

Evidence in criminal cases—Child—Corroboration—Sworn Evidence.

The appellant, who was tried together with two other persons, was convicted of possessing explosive articles on the sworn evidence of a boy of 12 years of age.

Held: (1) The sworn evidence of a child need not, as a matter of law, be corroborated, but a Judge should direct himself that there is a risk in acting on the uncorroborated evidence of young boys or girls, though he may do so if convinced the witness is telling the truth.

Campbell (1956) 40 Cr. App. R. 95, applied.

(2) In the circumstances of this case it did not appear from the summing up that the Judge had considered the case of the appellant separately and that, having found that the case against him was supported only by the evidence of a boy of 12 years of age, he decided to act on such evidence.

Conviction quashed.

[**Editorial Note**: This judgment refers to the sworn evidence of a child aged twelve. As regards children of "tender years", section 9 of the Evidence Law, Cap. 15, provides that a child of tender years may give unsworn evidence in any criminal proceedings, but the person accused cannot be convicted unless such unsworn evidence is corroborated by material evidence implicating the accused. The corresponding provision in England is section 38 (1) of the Children and Young Persons Act, 1933. It will be observed that there is no definition either in the English Act or in the Cyprus statute (Cap. 15) of what is meant by "a child of tender years". Though "child" is defined in the English Act as a person under the age of 14, there is no similar definition in the Cyprus statute.

Under the second proviso to sub-section (1) of section 54 of the Criminal Procedure Law, Cap. 14, it is provided that the court may examine without oath any child of tender years who does not, in the opinion of the court, understand the nature of an oath. Whether a child is of tender years is a matter for the court to decide (see Campbell (1956) 40 Cr. App. R. 95 at p. 99).]

Case referred to:

Campbell (1956) 40 Cr. App. R. 95.

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REGINA
v.
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REDJEB.

Appeal against conviction.

The appellant was convicted at the Special Court in Nicosia (Case No. 594/57) on the 9th February, 1957, of the offence of possessing explosive articles, contrary to Regulations 53 (*b*) and 72 (*c*) of the Emergency Powers (Public Safety and Order) Regulations, 1955, to (No. 13) 1956, and was sentenced by *John J.* to 9 months' imprisonment.

O. Orek for the appellant.

H. Gosling for the Crown.

The judgment of the Court was delivered by :

ZEKIA, J. : The case against the appellant rests solely on the sworn evidence of a boy of 12 years of age who had seen the appellant from his back from a distance of two donums removing 4 mortar bombs placed on a carob tree. Although there was a gathering at the spot and a few other witnesses came and gave evidence against the other co-accused, no other witness has seen the appellant removing the bombs from the carob tree. The boy has been cross-examined as to the possibility of his making a mistake and he expressed himself in the words " I thought it was he " which might very well indicate that he was not very sure of his identification.

As a general rule the sworn evidence of a child under 14 can be acted upon after careful caution. The statement of law is given in a recent case, the case of *Forbes McArthur Campbell* (1956), 40 Cr. App. R. 95. Lord Goddard C.J. at p. 102 said :—

> " To sum up, the unsworn evidence of a child must be corroborated by sworn evidence ; if then the only evidence implicating the accused is that of unsworn children, the judge must stop the case. It makes no difference whether the child's evidence relates to an assault on him or herself or to any other charge, for example, where an unsworn child says that he saw the accused person steal an article. The sworn evidence of a child need not, as a matter of law, be corroborated, but a jury should be warned, not that they must find corroboration, but that there is a risk in acting on the uncorroborated evidence of young boys or girls, though they may do so if convinced the witness is telling the truth, and this warning should also be given where a young boy or girl is called to corroborate the evidence either of another child, sworn or unsworn, or of an adult. The evidence of an unsworn child can amount to corroboration of sworn evidence, though a particularly careful warning should in that case be given."

Apart from the inherent weakness in the evidence of this boy there appears that the learned Judge in his summing up misdirected himself in assuming that the appellant, accused 3 in the Court below, has participated

in the crime from the very start along with other two accused. At page 26 he said :

> " They all confirm they saw all three accused removing a khaki coloured bag, or sack, containing exhibit 1 from hiding in the bushes ".

Here it is not disputed that the learned Judge was making an erroneous finding because there is no evidence whatsoever to support this statement as far as accused (3) is concerned. It does not appear at all from the summing up that he considered the case of the appellant separately and that having found that the case against him was supported only by the evidence of the said boy he decided to act on such evidence. On the contrary, from the summing up we have quoted, it appears that his mind was improperly influenced by the wrong supposition that the appellant, accused 3, was implicated in the matter from the very start along with the other co-accused. We think, therefore, that the conviction in this case cannot stand and that the appeal should be allowed.

Conviction quashed.