[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

1961
May 11, 31

MICHAEL VASSILI VOLETTOS

v.

THE REPUBLIC

MICHAEL VASSILI VOLETTOS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2319).

Criminal law—Criminal Procedure—Evidence in criminal trials—Confessions by persons in custody—Confessions to the Police—Alleged to have been obtained by improper means, especially ill-treatment—Duties of the Courts in dealing with such issues—Desirability for legislation bringing the Cyprus law as to confessions to the Police, in cases of serious offences, into line with the Indian Evidence Act, 1872, *sections* 25 *and* 26*—Whereby confessions by any person in custody are inadmissible unless made in the immediate presence of a Magistrate.*

Evidence—Evidence by members of the Police—Should be approached with the greatest caution—Weight to be attached to retracted confessions

This is an appeal against conviction (and sentence) of manslaughter. The grounds of appeal against conviction were that the conviction rested on an improperly obtained, and therefore inadmissible, confession and that, in any event, the retracted confession upon which the conviction rested, could not stand the test of truth. The trial court, by majority, ruled out the first confessions of the appellant, but refrained from making any finding on the latter's allegations for ill-treatment, the trial court being content with stating that the aforesaid confessions were inadmissible because the Court were not satisfied that they were made by the accused (appellant) freely and voluntarily. This rather guarded attitude of the trial court was commented upon by VASSILIADES, J. Very significant are his *dicta* as regards generally the duties of the trial courts when dealing with and deciding upon the issue of confessions of persons in custody alleged to have been obtained improperly, as well as the observations of JOSEPHIDES, J. as to the desirability of bringing Cyprus law in the matter, at least as far as grave offences are concerned, into line with the provisions of sections 25 and 26 of the Indian Evidence Act, 1872 (quoted *post,* at p. 186).

Held: (1) In their well considered judgment the Assize

Court were unanimous on the finding that the deceased was killed by the appellant, notwithstanding their difference on other points.

(2) With regard to the admissibility of certain confessions alleged to have been wrongly admitted in evidence, it appears to have been adopted by all three members of an Assize Court inclined to give the prisoner the benefit of every doubt in their mind and ready to rule out statements which they thought objectionable.

(3) And finally as to the weight which is to be given to the appellant's confessions, this Court is unanimously of the opinion that applying the tests approved in *R. v. Sykes* 8 Cr. App. R. 233, at p. 236 and quoted in *Sfongaras* case (22 C.L.R. 113, at p. 120), it cannot be said that the trial court were wrong or were unreasonable in giving credit to the confessions admitted in evidence. There is ample material in the case, outside the confessions, upon which the trial court could reach the conclusion that those confessions were substantially true.

(4) Therefore the appeal against conviction fails.

(5) As to sentence, the Court is equally unanimous in the view that in the circumstances, the sentence imposed by the trial court should not be disturbed.

Appeal dismissed.

Cases referred to :

R. v. Sykes 8 Cr. App. R. 233.

Reg. v. Sfongaras 22 C.L.R. 113.

Rex. v. Mentesh 14 C.L.R. 232.

R. v. Thompson (1893) 2 Q.B. 12.

R. v. Paul ("*The Times*" newspaper, 10 Nov. 1958).

Per VASSILIADES, J: (1) In a country where the administration of criminal justice is based on the accusitorial system ; where the law jealously guards the citizen in police custody, against inquisition and all kinds of interrogation; and requires that such a person be put on his guard by a proper legal caution if he offers to talk; where the law presumes the accused to be innocent until his guilt be established by the prosecution to the satisfaction of the competent

court, beyond all reasonable doubt, we have in this case, a man on trial for murder, which turns mainly on what the accused is alleged to have said to the police, while in custody, and under what circumstances did he say it, rather than on independent evidence tending to prove his guilt. An aged man protesting his innocence, same as he did at his trial, and further back at the time of his arrest; a father of grown-up children complaining to his judges upon oath, that he was grossly ill-treated in a police station by a number of policemen, in the presence of an Assistant Superintendent of the C.I.D., the first night he was there under a remand order.

After two days trial on this side-issue, there comes the Court's finding which I have already referred to, earlier in this judgment*: two out of the three judges, were not satisfied that the alleged statements were made by the accused, freely and voluntarily, as required by law, and they were, therefore, inadmissible.

It is true that this was all that was required to decide the issue before them. But with all respect to the trial judges, that was, in my opinion, insufficient for the purpose of doing justice in the case, according to law.

If statements made by the accused to the police officers, reduced to writing by a C.I.D. Superintendent, were not made "freely and voluntarily", how were they made? Were they the result of violence, as alleged by the accused? That was, in my view, a very material and pertinent question to answer, in order to do justice in this particular case; and in the performance of every criminal court's duty to apply firmly and effectively the law protecting persons in custody, against abuse of power.

I do not, for one moment, underestimate the difficulties of the Police in checking and detecting crime; far from it. Fully appreciating the difficulties in their fight against the criminal, I consider that the Police deserve, and are fully entitled, to the assistance of every good citizen; and to the support and protection of the law-courts of the country.

But same as in the case of all other men, policemen are not all perfect. They have their shortcomings; their human weaknesses. They may be overzealous in the detection of crime; hard in their handling of the potential criminal; or dangerously certain of the correctness of their suspicions.

* See *post* at p. 177.

It is therefore incumbent upon the criminal courts to watch vigilantly the methods of police officers in the detection of crime; and to stand as a firm barrier against abuse of authority, on their part. If the Courts flinch in this duty, it is very difficult to say what amount of hardship, of injustice, and of damage to the community, may result.

Had the Court, in this case, found what circumstances rendered accused's first statements inadmissible; what made this aged appellant come out at that stage of the investigation with confessions which, in the opinion of two judges, were not free and voluntary, all the statements which he made thereafter to the same investigating officers, might be seen in a different light, and might be given other weight.

Moreover, (and this is just as important in the interests of justice) the policeman whose conduct rendered those statements inadmissible, would not be likely to use again the same methods. He should no longer have the opportunity to do so.

(2) When Mr. Justice Thomas, nearly thirty years ago, after citing a passage from the 11th Edition of Taylor on Evidence, went on to say in *Rex. v. Mentesh* (14 C.L.R. 232, at p. 244) that --

> "the Courts here should exercise the greatest caution before acting upon the evidence of members of the Police Force, where it is unsupported by independent testimony, and particularly in cases of serious crime,"

he was sounding a very wise warning to the Courts; a warning the wisdom of which, my 37 years of experience at the Bar and Bench of almost every Court in Cyprus, has constantly confirmed, time after time.

Per JOSEPHIDES, J: It may well be that some or all of these allegations are untrue, but what is really disturbing is the frequency with which such allegations of ill-treatment are made by persons in police custody who make confessions while in custody. Having considered this matter carefully and anxiously I think that in order to remedy such a situation and to prevent possible abuse of their powers by the police, it is desirable that the legislature should consider placing our law as to confessions on a similar footing as the law in India. The relevant provisions are sections 25 and 26 of the Indian Evidence Act, 1872, which read as follows:—

"25. No confession made to a Police-officer shall be proved as against a person accused of any offence".

"26. No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person".

The object of section 25 of the Indian Act is to prevent confessions obtained from accused persons through any undue influence being received in evidence against them. The broad ground for not admitting confessions made to a police officer is to avoid the danger of false confessions, and the object of both sections is to prevent abuse of their powers by the police. On the one hand, section 25 excludes confessions to a police officer under any circumstances while, on the other, section 26 excludes confessions to any one else, while the person making it is in a position to be influenced by a police officer, unless the free and voluntary nature of the confession is secured by its being made in the immediate presence of a Magistrate, in which case the confessing person has an opportunity of making a statement uncontrolled by any fear of the police. Recently in *R. v. Paul* (*"The Times"* newspaper 10 November, 1958) a High Court Judge in England expressed his preference for that system.

While fully appreciating the difficult task with which the police in Cyprus are often faced, on many occasions without any help from the public to which they are entitled, I do not consider that the work of the police would be seriously hampered if confessions, say, in the case of homicide and other serious crimes were required to be made before a judge and not a police officer; and this would be in the interests of the administration of justice in Cyprus.

Appeal against conviction and sentence.

The appellant was convicted on the 13th February, 1961, at the Assize Court of Nicosia (Criminal Case No. 11942/60) on one count of the offence of manslaughter, and was sentenced by Stavrinides, P.D.C., Hji Anastassiou and Ioannides, D.JJ. to seven years' imprisonment.

R. R. Denktash for the appellant.

G. S. Stavrinakis for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of VASSILIADES, J.

O' BRIAIN, P.: In this case I have had the advantage of reading Mr. Justice Vassiliades' judgment and I agree with it. I wish to say that in dealing with difficult issues of fact such as were raised by the objection to the admission of accused's statements and the allegation of misconduct by the Police in these cases, it may very well happen that a court cannot, with any degree of confidence or certainty, say where the truth lies.

In such circumstances, it would, in my opinion, be the duty of the Court simply to say, as I think the Assize Court did in this case, that the onus had not been discharged by the prosecution. I would be very loath to criticize the Police unless I was definitely satisfied that they had misconducted themselves. In that event, I would have no hesitation in condemning, in the strongest terms, their misconduct.

ZEKIA, J.: I agree with the dismissal of the appeal.

VASSILIADES, J.: This is an appeal against conviction and sentence in a homicide case, where the appellant was convicted of manslaughter by the Assize Court of Nicosia, and was sentenced to seven years imprisonment.

The appeal against conviction is made mainly on two grounds:—

(a) that certain statements made by the appellant, while in Police custody, were the result of ill-treatment and improper pressure on the part of the Police, and were, therefore, wrongly admitted in evidence as confessions; and

(b) that the trial court, having admitted the statements as voluntary, failed in any case to weigh them with the care and caution necessary in the circumstances, before acting upon them.

The appeal against sentence is made on the ground that, having regard to the facts as found by the trial court, and to the age and character of the appellant, the sentence is excessive.

The appellant, a man of mature age, of Galini village in the area of Tilliria, was arrested at his house by a sergeant

of the Rural Police (now known as the Gendarmerie) early in the morning of the 19th August, last, a couple of hours after the discovery of the dead body of a shepherd from a neighbouring village, who had failed to return home the previous evening.

The body was found by a search party, lying in a bush, in the open country, bearing a number of severe knife-wounds, which had apparently caused the victim's death.

Appellant's arrest was effected in the presence of his wife and their grown up daughter, after the police had searched their house. A pair of rubber-boots and a freshly washed garment, belonging to the appellant, were seized by the police, on that same occasion. Questioned about an injury on his forehead, appellant said that he had been gored by one of his cows, a couple of days earlier.

When the sergeant informed the appellant that he was being arrested in connection with the murder of the shepherd in question, the appellant said that he had no knowledge. Appellant's son, age 22, was also arrested at the same time. They were taken away together, but they were later placed in two separate Police Stations.

There can be no doubt that as from his arrest, the appellant was a person in police-custody, as a suspect for the homicide under investigation. He remained in custody under remand orders obtained in due course, from time to time, until he was formally charged at Lefka Police Station on the 9th September, and he was then brought to Nicosia Central Prisons, where he was kept until his trial.

On the first day of their arrest, appellant and his son were brought to Nicosia together, and were taken before a judge in chambers for a remand order. They were then returned to the District Stations, where they were separately kept.

It is part of the case for the prosecution that the following morning, August 20th, an Assistant Superintendent of Police, in charge of the C.I.D. Lefka, was told something by a Constable in the Police yard, whereupon he went into the charge-room where he saw the appellant, who made a statement to him. The officer then took appellant to the C.I.D. office where he took down in writing what appellant had to say; when he finished, he read over the statement to the appellant, and had it formally signed.

At the trial, the prosecution sought to put in evidence as confessions, both the oral statement made by the appellant to the officer, in the charge-room ; and the written statement obtained by the officer immediately afterwards, and signed by the appellant.

Counsel for the defence strongly objected to the admissibility of those statements, on the ground that they were the result of ill-treatment, meted out to the prisoner in the C.I.D. office of the Police Station, during the previous night. counsel put his client's case in these words: (page 29 of the record).

> ".....at about 10 p.m. on the 19th of August, he was brought up from his cell to a room in the Lefka Police Station, where he met Inspector Mehmed Hassan, who was then in mufti, who introduced himself as an officer and interrogated accused at length about his movements, and pressed him to admit this crime because either he or his son would get into trouble. When this little talk got him nowhere he told the accused that the next time he was brought up a negro would attend to him and he did not care what happened to him after that. They took him back to his cell and at about midnight they brought him up again. They closed the doors and windows, there were five policemen in all, a certain P.C. Reshat, P.C. Michael Antoniou, P.C. Mehmed Mustafa, Inspector Mehmed Hassan and Odysseas Lambrou (the Assistant Superintendent in question) they grossly ill-treated him, beat him up until he fainted; they made him bleed, they put water on his head, and they put his legs in water; and during this treatment he got sore feet and his hands seriously injured as he was trying to protect his legs. He was shouting for a doctor and it is as a result of this ill-treatment that this poor man was forced to sign a statement shortly afterwards. And then we shall come to later stages when the ill-treatment continued for several days in the hands of the same policemen, until the police were satisfied that they had got all they could from him. That is the general outline".

After this statement by responsible counsel, on behalf of this aged prisoner, the trial court proceeded to hear evidence on the admissibility of the alleged confessions. They heard the C.I.D. Superintendent, seven other police-witnesses,

and the prison-doctor who examined the appellant about a month later; - some eleven days after his admission to the Central Prison; - the Court also heard the prisoner who was called by his counsel, in the box, on the side-issue. The notes of evidence in this connection, occupy about one third of the whole record; they are 36 pages.

And then comes the Court's ruling in four lines; it reads:

> "the majority of the Court are not satisfied that the alleged statements were made by the accused freely and voluntarily and, therefore, in the view of the majority, are inadmissible". (p. 66)

I shall have to deal with this ruling later in the judgment. I now propose to deal shortly with what happened after the statements to Asst. Supt. Lambrou on the 20th August.

The officer, taking the accused with him and two other policemen, went to accused's village, where they searched a place shown to them by the accused, but found nothing. Returning the prisoner back to the Station, the Police went again to the same spot in the afternoon of the same day, where "on the indication" of the prisoner's wife, they found a knife in its sheath, buried underground.

Six days later, on the 26th August, the prisoner is said to have made another statement to a policeman, after a conversation of some 15 minutes, alleged to have taken place at the prisoner's request. The prosecution sought to put that statement in, as well. But upon objection taken on the ground that it had been made without caution, the Court ruled that the statement should be excluded.

The witness, thereupon continued: (p. 71)

> "I then cautioned the accused, and he went on to say: 'I want to go and show you the place where this case took place'. I then saw Sub-Inspector Mehmed and told him something and together with the Sub-Inspector and P.C. Koudounaris we took the accused and went to locality Mersinadji, to a spot nearest where the murder took place. By nearest I mean as far as the car could go".

Objection was again taken on behalf of the accused on the authority of *Rex. v. Mentesh* (14 C.L.R. 232, at p. 239)

that the prisoner should not have been taken to the place where the crime was committed. But the Court ruled that the passage cited from that case, did not cover occasions where the prisoner volunteered to accompany the Police to the *locus in quo*; and overruled the objection (page 72 of the notes).

Evidence was then adduced as to where the party went that day, on a trip which lasted about 3 hours. But when it came to statements made by the prisoner during the trip, objection was taken again, on the ground that the statements were not proved to be voluntary, nor were they made after the required caution.

The Court now ruled that there was "again a trial within a trial" where the prosecution had to show that accused's statements were admissible. And another trial within a trial followed, in the course of which, the prisoner came to the witness-box for a second time (page 78).

Eventually the Court made their eighth ruling on these objections, to the effect that the Court were satisfied that there were no circumstances rendering the evidence of what accused said or did, inadmissible; "no promise, violence, threat, or anything else", the Court said (p. 80).

The police-witness (P.W.22) then went on to relate what happened when the party reached the bush where the body of the victim was found. His evidence at p. 81 reads:-

> "He (accused) showed to us a 'rasha' bush and said:
>
> 'It is here that I left Yorkis stabbed'. Then he pointed in a certain direction and said: 'This is where he came from, he found me on lower ground and there was a fight between us (*etsakkothikame*). He threw one or two stones at me; he then gave me a blow with a shepherd's stick, we came to grips, we fell down and I took the knife out of my 'vourga' and I thrust it into him.' As he said 'we fell on the ground' accused lay down on the ground by way of demonstration. He went on : 'I left him stabbed there, I took charge of my oxen and left'. Then he took us along a path which he said, he followed after the incident".

This is how the prosecution were eventually able to put before the trial-court the police version of accused's confession.

The same witness then went on to say that on the 9th

September (*viz.* about 14 days after the trip to the spot) he formally charged the accused, in the presence of a Sub-Inspector, and after caution, he took accused's answer to the formal charge.

When the prosecution attempted to put in this statement, the defence took again objection. But this time on a different ground. The prisoner was neither charged, counsel said, nor did he make or sign any statement. It was a very daring allegation to make.

The Court, now towards the end of the 5th day of the trial, proceeded to hear evidence on this new side-issue. And in the end, they gave their ruling: "We are satisfied, they said, that on the occasion in question, accused was formally charged and cautioned, that he made a statement which was reduced into writing, read over to him and he signed as correct" (p. 85.) The statement was put in, as exhibit 12. It is a short statement which reads as follows:—

> "It is not by malice aforethought that I stabbed him; I was grazing my oxen in this locality, he struck me with his knob-stick on the head, we came to grips, and we fell down ; I drew a knife and I stabbed him to save myself from him".

After this, the prosecution recalled one witness for some further examination, and closed their case.

When called upon for his defence, the appellant, electing to make an unsworn statement from the dock, said:

(p.98) "On account of the beating that I received, and out of fear for my son; I am innocent. I leave the matter to God. If there are witnesses who testify, let them suffer the consequences. That is all".

The defence then called appellant's wife, and closed their case.

No one can say that the Assize Court who tried this case did not hear it with patience; or that they did not handle it with great care. In a well considered judgment, dealing with every material aspect of the case, the Court gave the reasons which led them to the conclusion that the deceased was killed by the accused. Their decision on this finding was unanimous. In the 10th page of their judgment (at p. 110 of the record) the Court say:

"Upon consideration of the whole evidence and of all Mr. Denktash had to say in his able address, we have come to the unanimous decision that deceased was killed by the accused".

The Court then proceeded to give the reasons for which one of the judges took the view that the killing amounted to murder; while the other two came to the conclusion, "although not without great difficulty" — as the judgment reads — "that a finding of manslaughter was just possible". And on this majority-judgment, the appellant was convicted of manslaughter.

It is this conviction that the present appeal seeks to attack on the grounds:—

(a) that it rests on an improperly obtained, and therefore inadmissible confession; and

(b) that the retracted confession, upon which it rests, cannot stand the test of truth.

And this is the hard core of the case. In a country where the administration of criminal justice is based on the accusitorial system ; where the law jealously guards the citizen in police custody, against inquisition and all kinds of interrogation ; and requires that such a person be put on his guard by a proper legal caution if he offers to talk; where the law presumes the accused to be innocent until his guilt be established by the prosecution to the satisfaction of the competent court, beyond all reasonable doubt, we have in this case, a man on trial for murder, which turns mainly on what the accused is alleged to have said to the police, while in custody, and under what circumstances did he say it, rather than on independent evidence tending to prove his guilt. An aged man protesting his innocence, same as he did at his trial, and further back at the time of his arrest ; a father of grown up children complaining to his judges upon oath, that he was grossly ill-treated in a Police station by a number of policemen, in the presence of an Assistant Superintendent of the C.I.D., the first night he was there under a remand order.

After two days trial on this side-issue, there comes the Court's finding which I have already referred to, earlier in this judgment. Two out of the three judges, were not satisfied that the alleged statements were made by the accused, freely and voluntarily, as required by law; and they were, therefore, inadmissible.

It is true that this was all that was required to decide the issue before them. But with all respect to the trial judges, that was, in my opinion, insufficient for the purpose of doing justice in the case, according to law.

If statements made by the accused to the police officers, reduced to writing by a C.I.D. Superintendent, were not made "freely and voluntarily," how were they made? Were they the result of violence, as alleged by the accused? That was, in my view, a very material and pertinent question to answer, in order to do justice in this particular case; and in the performance of every criminal court's duty to apply firmly and effectively the law protecting persons in custody, against abuse of power.

I do not, for one moment, underestimate the difficulties of the Police in checking and detecting crime; far from it. Fully appreciating the difficulties in their fight against the criminal, I consider that the Police deserve, and are fully entitled, to the assistance of every good citizen ; and to the support and protection of the law-courts of the country.

But same as in the case of all other men, policemen are not all perfect. They have their shortcomings; their human weaknesses. They may be overzealous in the detection of crime ; hard in their handling of the potential criminal ; or dangerously certain of the correctness of their suspicions.

It is therefore incumbent upon the criminal courts, to watch vigilantly the methods of police officers in the detection of crime ; and to stand as a firm barrier against abuse of authority, on their part. If the Courts flinch in this duty, it is very difficult to say what amount of hardship, of injustice, and of damage to the community, may result.

Had the Court, in this case, found what circumstances rendered accused's first statements inadmissible; what made this aged appellant come out at that stage of the investigation with confessions which, in the opinion of two judges, were not free and voluntary, all the statements which he made thereafter to the same investigating officers, might be seen in a different light, and might be given other weight.

Moreover, (and this is just as important in the interests of justice) the policeman whose conduct rendered those statements inadmissible, would not be likely to use again the same methods. He should no longer have the opportunity to do so.

When Mr. Justice Thomas, nearly thirty years ago, after citing a passage from the 11th Edition of Taylor, on Evidence, went on to say in Rex *v. Mentesh* (14 C.L.R. 232, at p. 244) that —

> "the Courts here should exercise the greatest caution before acting upon the evidence of members of the Police Force, where it is unsupported by independent testimony, and particularly in cases of serious crime".

he was sounding a very wise warning to the Courts; a warning the wisdom of which, my 37 years of experience at the Bar and Bench of almost every Court in Cyprus, has constantly confirmed, time after time.

And dealing with the weight to be attached to these retracted confessions, made to police officers by suspects in custody, I cannot do better than refer with great respect to the well known words of Cave J. in R. *v. Thompson* (1893) 2 Q.B. 12, so often cited ever since they were first spoken almost seventy years ago, recently quoted by Bourke C.J. in *Sfongaras* case (22 C.L.R. 113, at p. 120). They are so well known and so universally accepted, that I need not repeat them.

With these considerations in mind, I now approach the case in hand.

The trial court ruled out the first confessions of this appellant, made on the 20th August. But refrained from making any finding on his allegations for ill-treatment.

After that, however, we have appellant's statements six days later, on the 26th August, and his conduct during the 3-hours trip with the Police to the scene of the crime. In this connection the trial-court say at p. 69 of the record:-

> ".....We see no reason for thinking that the ill-treatment which may have been meted out to the accused on the night of the 19th to the 20th August, still continued to have any effect on the mind of the accused in making a statement on the 26th".

Without expressing myself on the soundness of this view, I merely observe that it appears to have been adopted by all three members of an Assize Court inclined to give the prisoner the benefit of every doubt in their mind; and ready to rule statements which they thought objectionable.

We then come to the Court's 8th ruling at p.80 to which I have already referred to. "We are satisfied" the Court said —

> "that there are no circumstances rendering evidence of what accused said and did between the time when he alighted from the car and he returned thereto, inadmissible — no promise, violence, threat or anything else".

And in closing stages of the trial, there is the Court's ruling regarding appellant's answer to the formal charge; on the 9th September ; exhibit 12. After hearing evidence on an objection based upon the allegation that the accused was never formally charged, and never made or signed any such statement, the Court were satisfied that the objection was devoid of any substance.

In their well considered judgment, the Assize Court were unanimous on the finding that the deceased was killed by the appellant, notwithstanding their difference on other points, and their failure to reach a unanimous verdict.

And finally as to the weight which is to be given to appellant's confessions, this Court is unanimously of the opinion, that applying the tests approved in *R. v. Sykes* (8 Cr. App. R. 233, 236) and quoted in *Sfongaras* case (*supra*) it cannot be said that the trial court were wrong or were unreasonable in giving credit to the confessions admitted in evidence. There is ample material in the case, outside the confessions, upon which the trial court could reach the conclusion that the confession was substantially true.

The appeal against conviction must, therefore, fail.

As to sentence, this Court is equally unanimous in the view that in the circumstances of this case, the sentence of the trial court should not be disturbed.

JOSEPHIDES, J.: It is with considerable hesitation that I have come to the conclusion that the appeal must be dismissed. I would, however, take this opportunity of making some observations on the allegations of ill-treatment made in this case, and the law applicable to confessions in Cyprus.

The victim in this case was killed on the 18th August, 1960, and the appellant was arrested and taken to the Police Station at Lefka on the following day, the 19th August, at

8.10 a.m., where he was kept in custody until the 9th September when he was moved to the Central Prison.

On the day of his arrest (19th August) at 4.45 p.m., the appellant was examined by Dr. Izzet Subhi, a Government medical officer stationed at Lefka, who found on the appellant a laceration on the forehead, scratches on the left cheek and "pricking" scratches on both hands. On the appellant's admission to the Central Prison some three weeks later he was found to bear a fracture of the 10th rib (left side) and another fracture in one of his feet, as to the existence of which there had been no evidence at the time of his arrest.

In the course of the hearing of the case before the Assize Court the prosecution alleged that the appellant had made a confession on the morning of August 20th, but objection was taken to the production in evidence of that confession on the ground that it was induced by ill-treatment and threats. The trial court heard evidence on that issue and it ruled that "the majority of the Court are not satisfied that the alleged statements were made by the accused freely and voluntarily and, therefore, in the view of the majority are inadmissible".

At the conclusion of the case in the course of their judgment the Assize Court gave their grounds for reaching that conclusion. This is the relevant extract from their judgment:

> "The majority of the Court ruled that we are not satisfied that statements alleged to have been made by the accused on the morning of August 20th were made freely and voluntarily. This finding was arrived at in the face of evidence by ASG Lambrou, Sub-Insp. Mehmet Hassan, P.C. Antoniou and other policemen. But that was only because of what the majority of the Court considered an overriding fact - a fracture in the side of the accused and in one of his feet, which the accused was found to bear on admission to the Central Prison, as to the existence of which at the time of his arrest there had been no evidence. But for that consideration none of us would have doubted that the accused had in fact made the statements and made them freely and voluntarily".

It will be observed that the police officers concerned with the alleged confession by the appellant were Sub-Insp. Mehmet Hassan, P.C. 540 Michael Antoniou, Asst. Supt. Odysseas Lambrou and other policemen.

The evidence of the appellant on the issue of ill-treatment was to the effect that during the night of the 19th August, he was ill-treated by Sub-Insp. Mehmet Hassan in the presence of P.C. 540 Michael Antoniou; that he was ordered to take off his shoes and he was beaten under the feet. At page 63 of the record appellant states: "They then passed my legs through the back rest of a chair. Then Sub-Insp. Mehmet said something which I did not understand and they started beating me. They were hitting under my feet with batons. I was shouting for a doctor". It was after this ill-treatment that his statement was taken at about midnight, according to the appellant.

In another appeal in which we are about to deliver judgment this morning (Criminal Appeal Nos. 2332 and 2333: (1) *Enver Mulla Feyzi* and (2) *Koufi Mehmet Emin v. The Republic*) the appellant Koufi was arrested on the 10th May, 1960, in the morning, and taken to the same police station at Lefka, where he was subsequently charged together with the other appellant with the attempted murder of a co-villager of theirs. After being in custody for five days he made a full confession on the 15th May, 1960, at 7 p.m. to the same two police officers, i.e. Sub-Insp. Mehmet Hassan and P.C. 540 Michael Antoniou.

In the course of the hearing before the Assize Court the defence alleged ill-treatment, but the Court after hearing evidence on that issue ruled that the statement had been made voluntarily.

The appellant Koufi in his evidence on the issue of ill-treatment stated that he was awakened in the night while he was in his cell in the Lefka Police Station by Sub-Insp. Mehmet Hassan and P.C. M. Antoniou, who ill-treated him. In the course of his evidence appellant Koufi stated (pp. 39 and 40) — "Then they brought two chairs and made me sit on one and passed my legs through the bars of the other. My shoes and socks were taken off and P.C. Michael Antoniou sat on my knees and Sub-Insp. Mehmet picked up a short and thick stick and with it he hit me on the soles of my feet. I was hit under the soles of my feet many times. I was hit so many times and felt such great pain that I could not stand it any longer and I kicked Michael away".

Two Assize Courts composed of different benches — one composed of three Greek judges in the present case (Vo-

lettos), and the other composed of three Turkish judges in the Koufi case — heard evidence on the issue of ill-treatment and gave their rulings as stated earlier in this judgment. What is disturbing in both cases is the similarity of a number of circumstances. The alleged ill-treatment is stated to have taken place in the same police station at Lefka. At least two of the police officers concerned i.e. Sub-Insp. Mehmet Hassan and P.C. 540 Michael Antoniou were concerned in the taking of the confessions in both cases and in the alleged ill-treatment of both appellants; and the alleged *modus operandi* is of a similar pattern, *i.e.* in the middle of the night a person in custody (one in May and another in August, 1960) is awakened by these police officers, his feet are passed through the bars of a chair and he is hit on the soles of his feet and other parts of his body.

It may well be that some or all of these allegations are untrue, but what is really disturbing is the frequency with which such allegations of ill-treatment are made by persons in police custody who make confessions while in custody. Having considered this matter carefully and anxiously I think that in order to remedy such a situation and to prevent possible abuse of their powers by the police, it is desirable that the legislature should consider placing our law as to confessions on a similar footing as the law in India. The relevant provisions are sections 25 and 26 of the Indian Evidence Act, 1872, which read as follows:—

"25. No confession made to a Police-officer shall be proved as against a person accused of any offence".

26. No confession made by any person whilst he is in the custody of a Police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person".

The object of section 25 of the Indian Act is to prevent confessions obtained from accused persons through any undue influence being received in evidence against them. The broad ground for not admitting confessions made to a police officer is to avoid the danger of false confessions, and the object of both sections is to prevent abuse of their powers by the police. On the one hand, section 25 excludes confessions to a police officer under any circumstances while, on the other, section 26 excludes confessions to any one else, while the person making it is in a position to be influenced by a police

officer, unless the free and voluntary nature of the confession is secured by its being made in the immediate presence of a Magistrate, in which case the confessing person has an opportunity of making a statement uncontrolled by any fear of the police. Recently in *R. v. Paul* ("*The Times*" newspaper, 10 November, 1958) a High Court Judge in England expressed his preference for that system.

While fully appreciating the difficult task with which the police in Cyprus are often faced, on many occasions without any help from the public to which they are entitled, I do not consider that the work of the police would be seriously hampered if confessions, say, in the case of homicide and other serious crimes were required to be made before a judge and not a police officer; and this would be in the interests of the administration of justice in Cyprus.

Appeal dismissed. Conviction and sentence affirmed; to run from day of arrest as directed by the Assize Court.