[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

ANTONIS MICHAEL MOZORAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2680)

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

ANTONIS MICHAEL MOZORAS,

Respondent.

(*Criminal Appeal No.* 2681)

Evidence in criminal cases—Police spy—Is not in law an accomplice—His evidence, however, must be very carefully scrutinized.

Criminal law—Sentence—Official corruption—Section 100 (*a*) *of the Criminal Code, Cap.* 154*—Appeal against sentence by the Attorney-General —Sentence increased.*

The appellant Mozoras was convicted and sentenced to £50 fine on a charge that he, being employed in the Public Service, did corruptly receive the sum of £8 from one S.K., contrary to section 100 (*a*) of the Criminal Code, Cap. 154. The main prosecution witness, was the said S.K., whom the trial Judge treated as an accomplice, while in strict law he was a police spy to detect the appellant, acting under the instructions of, and in co-operation with the police. The trial Judge applying the law applicable to accomplices in criminal cases, looked for and found corroboration of the evidence of the aforesaid prosecution witness. The accused appealed against his conviction and the Attorney-General appealed against the sentence of £50 fine imposed. The main grounds of the appeal against conviction were to the effect that there was no sufficient evidence warranting the conviction and that the evidence of the main prosecution witness, the said S.K., whom the trial Judge treated as an accomplice was not adequately corroborated by independent evidence implicating the accused.

Held : On the appeal against conviction :—

(1) In law the chief prosecution witness S.K., was not an accomplice, but a police spy having participated in the offence simply for the purpose of obtaining evidence.

R. v. *Bickley*, 2 Cr. App. R. 53, *applied.*

(2) However, the evidence of a witness of this nature must be very carefully scrutinized and the trial Courts must believe that his evidence can be accepted without corroboration.

(3) (ZEKIA and VASSILIADES, JJ., *dissenting*) :

In the circumstances of this case the trial Judge as a matter of prudence rightly looked for and found corroboration of the evidence of the main prosecution witness S.K. There was sufficient corroboration and the trial Judge rightly accepted the version of the said witness that he bribed the appellant, and rejected that of the appellant.

Appeal against conviction dismissed.

Held : On the appeal against sentence by the Attorney-General :—

Per WILSON, P. and JOSEPHIDES, J.:

(1) The Public Service in this country for a very long time has been very rightly highly regarded. It has been efficient and it has been incorruptible. Its integrity must be maintained in so far as it lies within the power of the Courts in imposing penalties to maintain it.

(2) In this case the minimum penalty that can be imposed to protect the public interest is one year's imprisonment to run from to-day. If such offences become common it may be necessary to impose even heavier penalties in the future.

Per VASSILIADES, J.: Having come to the conclusion that the conviction should be set aside, I should have nothing to say regarding the appeal of the Attorney-General against sentence. But I think I must add that I share the view that the offence of bribery, especially bribery by a civil servant, is a serious crime and I associate myself with the view that the sentence of £50 fine in this case is inadequate punishment.

Per ZEKIA, J.: Having held that the conviction should be set aside, I need not express an opinion on the second appeal by the Attorney-General against sentence.

Appeal against sentence allowed. Sentence of £50 fine set aside and a sentence of one year's imprisonment to run from to-day to be substituted.

Cases referred to :

Lazaris Demetriou v. *The Republic*, 1961 C.L.R. 309 ;

R. v. *Bickley*, 2 Cr. App. R. 53.

Appeal against sentence by the Attorney-General of the Republic.

The appellant was convicted on the 15th October, 1963, at the District Court of Nicosia (Criminal Case No. 13305/63) on one count of the offence of official corruption contrary to s. 100 (*a*) of the Criminal Code, Cap. 154, and was sentenced by Pierides, D.J., to pay a fine of £50, and £5.230 mils costs.

K. C. Talarides for the appellant.

A. Triantafyllides with G. *Tornaritis* for the respondent.

Appeal against conviction.

The appellant was convicted on the 15th October, 1963, at the District Court of Nicosia (Criminal Case No. 13305/63) on one count of the offence of official corruption contrary to s. 100 (*a*) of the Criminal Code, Cap. 154, and was sentenced by Pierides, D.J., to pay a fine of £50 and £5.230 mils costs.

A. Triantafyllides with G. Tornaritis for the appellant.

K. C. Talarides for the respondents.

The following judgments were read by :

WILSON, P : These are two appeals : 1. By the accused from his conviction for the offence of official corruption contrary to section 100 (*a*) of Cap. 154, and ; 2. On behalf of the Republic against the penalty which was imposed by the trial Court after the appellant was convicted of the offence just mentioned.

The appellant was charged by a charge, filed on August 22, 1963, with several offences of alleged official corruption. There were five counts in all relating to different dates. The trial proceeded, however, only with respect to counts 4 and 5. The first three remained in abeyance. The trial Judge acquitted the appellant on count 4 and convicted him on count 5, which alleged " the accused on August 10, 1963, at Nicosia, in the District of Nicosia, being employed in the Public Service and being charged with the performance of the duties of Driving Examiner by

virtue of such employment, did corruptly receive from one Stelios Keravnos of Nicosia the sum of £8 on account of the fact that he the accused in the discharge of his duties of office, had passed one Andreas Neophitou of Prodromos on 31.7.63, one Andreas Constantinou of Lapithos on 8.8.63 and one Solon Petrou of Akaki on 10.8.63, in their driving test who were students of the said Stelios Keravnos".

The trial Judge carefully reviewed the evidence given at the trial and convicted the accused of the offence as charged and fined him £50 and £5.230 mils costs or in default six months' imprisonment.

From this conviction the accused appeals on six grounds, namely that—

"(1) There was not sufficient evidence in law warranting the finding that the accused was guilty ;

(2) the conviction was mainly based on the evidence of Stelios Keravnos, who was found by the Court to be an accomplice and admittedly of bad character without the part of his evidence, relating to the circumstances under which the money was paid to him, being corroborated by independent evidence, implicating the accused ;

(3) the Court erroneously found that the evidence of agent provocateurs or police spies was such independent evidence corroborating the evidence of the accomplice ;

(4) even such evidence it may be considered as corroborative evidence, and the fact that marked currency notes are found in the possession of the accused, do not corroborate the part of the evidence of the accomplice relating to the circumstances under which such notes were given to the appellant ;

(5) the Court failed to give the proper interpretation to the explanations given from the very beginning by the appellant as to the circumstances under which the money was given to him which are consistent with truth ; and

(6) the Court in the absence of any finding as to the truthfulness of the witnesses of the defence and of Tekin Birindji, a prosecution witness, failed to draw the reasonable inference from their evidence and to test the evidence of the accomplice and the agent provocateurs in the light of such inference."

I shall deal firstly with the question of whether or not Stelios Keravnos was an accomplice. Contrary to the finding of the learned trial Judge I have come to the

conclusion that he was not an accomplice in this case. The decision in *R.* v. *Bickley* 2 Cr. App. R., page 53, cited in the 35th edition of Archbold Criminal Pleading Evidence and Practice, at page 531 says this :

> " A person who participates in an offence simply for the purpose of obtaining evidence is not an accomplice for the purpose of the rule requiring corroboration."

It appears, therefore, that the chief witness for the procecution was not an accomplice.

However, having said that, I must also add that the evidence of the police witness of this nature must be very very carefully scrutinized, and the trial Court must believe that the evidence can be accepted without corroboration.

In this case the learned trial Judge, who is a very experienced judge in criminal cases, did not rely entirely on the evidence of this particular witness. It is my view that his reasons for convicting the accused are sound and that there was ample evidence to support his conclusion. Having said this, it is unnecessary really to go on to an analysis of the evidence in detail.

For these reasons, in my opinion, the appeal itself should be dismissed.

With respect to the appeal filed by the Attorney-General against the penalty, it is quite obvious that the fine of £50 in a serious case of this nature is quite inadequate. If inadequate penalties are given they are no deterrent to wrong doers and the whole body of the public suffers. Consequently we are called upon to perform a most difficult task which is to impose an adequate penalty even though it results in a very severe suffering by the convicted person.

The Public Service in this country for a very long time has been very highly regarded. It has been efficient and it has been incorruptible. Its integrity must be maintained in so far as it lies within the power of the Courts in imposing penalties to maintain it.

It is my view that in this case the minimum penalty that can be imposed to protect the public interest is one year's imprisonment. The penalty which has been imposed, therefore, should be set aside and in its place be substituted a sentence of one year's imprisonment, to run from to-day. If such offences become common it may be necessary to impose even heavier penalties in the future.

There will be other judgments to be delivered in this case and I am going to ask Mr. Justice Vassiliades to deliver his judgment first.

VASSILIADES, J. : The appellant in this case was charged in the District Court of Nicosia on five counts, but the trial proceeded on two of them only, for reasons which appear on the record, and which I need not touch as they do not affect this appeal.

The two counts in question, charged the appellant with bribery contrary to section 100 (*a*) of the Criminal Code, Cap. 154. The first (which on the charge-sheet is count 4) charges him with corruptly accepting the sum of £2 on the 3rd July, 1963 ; and the second (count 5 in the charge-sheet) with corruptly accepting the sum of £8 on a subsequent date—the 10th August, 1963. In both counts the bribery charged was the acceptance of the respective sums from one and the same person—witness No. 2 for the prosecution—one Stelios Keravnos.

The relevant facts appear in the judgment of the trial Court. The main issue upon which the case was fought on both counts, was whether the appellant had in fact received the money, as stated by Keravnos.

Rejecting the evidence of this witness regarding the offence in the first count—the bribery of the 3rd July, 1963—the trial Judge acquitted the appellant on that count. And then he proceeded to deal with the offence in the next count—the bribery of the 10th August, 1963. After dealing with the evidence in this connection, the learned trial Judge concluded :

> " For these reasons the Court rejects the version of the accused and accepts the version of Stelios Keravnos and therefore finds the accused guilty on count 5."

This conclusion read alone, would appear to indicate that between the two versions, the trial Judge accepted that of the witness, rejecting the version of the accused. But read in the background of the rest of the judgment, the learned trial Judge's conclusion results from a reasoning containing misdirections as to the law governing the evidence of an accomplice, and as to the burden of proof.

As regards the question whether witness Keravnos was or was not an accomplice, it is clear from what appears in the judgment, that the learned trial Judge did not have in mind the case of *Lazaris Demetriou* v. *Rep.* (1961) C.L.R. 309,

where the matter was exhaustively dealt with before this Court. Whether a person is or is not an accomplice, in Cyprus, is determined by the relevant provisions of our Criminal Code. And, this point was considered in the case to which I have just referred.

Whether a witness is or is not an accomplice goes, in substance, to the weight of his evidence ; whether his evidence should be considered with care and caution as coming from a person who participated in the commission of the offence, and may have been trying to alleviate his position by throwing the burden on his comrades in the dock.

In this case, this accomplice-witness was discredited to the extent that the Judge did not feel safe to act upon his evidence in one of the counts ; but regarding the other count, the judge considered that there was sufficient corroboration in law which created a different position. Reading his reasons, however, I have no doubt in my mind that had they been used in charging a jury, they would constitute ground for quashing the conviction. To me it is clear that such a direction to a jury should be considered as a misdirection ; and, if it is a misdirection for a jury, it is equally a misdirection in the case of a Judge's verdict.

I, therefore, take the view that the appeal against conviction should be allowed ; and the conviction on count 5 should be quashed.

Regarding the appeal of the Attorney-General against sentence, having come to the conclusion that the conviction should be set aside, I should have nothing to say. But I think I must add that I share the view that the offence of bribery, especially bribery by a civil servant, is a serious crime and I associate myself with the view that the sentence of £50 fine in this case is inadequate punishment. I leave the matter at that.

ZEKIA, J. : I am also of the opinion that the appeal should be allowed, the main grounds being that I entertain grave doubts whether the learned trial Judge properly directed himself in arriving at his verdict of guilty in this particular case.

The tenor of his judgment leaves the impression that he was acting on the preponderance of evidence throughout, instead of examining the evidence with a view to ascertaining whether it could establish the guilt of the accused beyond reasonable doubt.

We read for instance from page 23 of his judgment, where he refers to the eight pounds found in the pocket of the accused:

> " The accused took them and counted them and saw that they were eight instead of ten. St. Keravnos told him that he would let him have two more one-pound notes later. The accused put the eight one-pound notes in the left-hand pocket of his trousers and not in his wallet and returned to his office. Cross-examined, the accused added that when he saw that the one-pound notes were eight and not ten he understood that Keravnos wanted to borrow £2 from him although Keravnos had not asked him for such a loan. These are undisputed facts."

Well, if the learned Judge states that these are undisputed facts, that amounts to the acceptance of the version of the accused given at the time. But coming to the end of his judgment, however, he compares this version with that of witness Keravnos and finds that the version of the accused is rather unnatural and the version of St. Keravnos acceptable. Perhaps, part of what I have already quoted was a mis-statement. The versions given on both sides are compared and preference is given to that of the witness ; in other words, the learned judge found that the explanation offered by the witness was more reasonable than the one given by the accused.

However, this is not the criterion in a criminal case and as I entertain grave doubts, whether he properly directed himself in arriving at his verdict, I am of the opinion that the appeal should be allowed.

Now, there was another appeal as to the sentence, that is, the one imposed was manifestly inadequate. This appeal, having been consolidated with the main one, *i.e.* the one made against conviction, I do not think that I need express an opinion on the second appeal which formed part of the first one.

JOSEPHIDES, J. : I agree with the judgment delivered by the President of this Court.

It would appear that the judgment of the trial Judge contains certain mis-statements, but having read the whole record of the evidence I am satisfied that there was ample evidence to support the conviction and that there was no substantial miscarriage of justice.

The prosecution witness Keravnos, as regards count 5 (the only count under appeal) is undoubtedly a police spy and not an accomplice in strict law, and thus, as a matter of law, his evidence does not require corroboration. This is in accordance with our Evidence Law, Cap. 9 (section 3) which applies the English Law and Rules of evidence on the point. The law as to accomplices and corroboration of their evidence was recently considered by this Court in the case of *Lazaris Demetriou* v. *The Republic* (1961) C.L.R. 309.

However, in the circumstances of this case I should say that as a matter of prudence the Judge rightly looked for and found corroboration of the evidence of Keravnos. (See judgment, pages 24F to 26C). There was, to my mind, sufficient corroboration and I think that the trial Judge rightly accepted Keravnos's version that he bribed the appellant, and rejected that of the appellant, *i.e.* that Keravnos gave him 8 one-pound notes and asked him to exchange them with 2 five-pound notes, promising to pay the balance of two pounds later.

In my view, on the evidence before him, the trial Judge rightly rejected the version of the appellant which was an unnatural one, and I think that, in weighing the evidence of the prosecution witness Keravnos as against that of the appellant, the Judge had to make a finding which of the two versions he accepted as true. To my mind this does not amount to applying the standard of proof applicable to civil proceedings *i.e.* proof by preponderance of evidence. In his judgment the Judge expressly referred to and applied the law of evidence applicable to accomplices in criminal cases, he treated the main prosecution witness Keravnos as an accomplice and looked for corroboration of his evidence, and he applied the standard of proof necessary in a criminal case, that is, proof beyond any reasonable doubt. In fact, in one respect the Judge applied a stricter test, that is to say, he treated Keravnos as an accomplice while, as already stated, in strict law Keravnos was a police spy to detect the appellant, acting under the instructions of, and in co-operation with, the police ; because, in respect of the charge which is the subject of this appeal, in accordance with a pre-arranged plan with the police, Keravnos gave to the appellant 8 one-pound notes which had been handed to him (Keravnos) by the police who kept a note of the serial number of the currency notes and photographed them before giving them to Keravnos, and those very same pound notes were eventually found by the police in the possession of the appellant on the same day.

On the whole I am of opinion that there was sufficient evidence to justify a finding of guilty beyond reasonable doubt and that there was no misdirection or substantial miscarriage of justice. I would, therefore, dismiss the appeal against conviction.

As to sentence, I agree that it is manifestly inadequate and should, in the circumstances of this case, be increased to one year's imprisonment for the reasons given in the judgment of the President of this Court.

WILSON, P. : I agree with the additional reasons given by Mr. Justice Josephides for the conviction.

Appeal against conviction dismissed.

Appeal against sentence allowed. Sentence of £50 fine set aside and a sentence of one year's imprisonment to run from to-day to be substituted.