CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL

FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

1966
Dec. 20,
21, 22,
1967
Jan. 9

—

SOTERIS NICOLA KOUMBARIS

v.

THE REPUBLIC

SOTERIS NICOLA KOUMBARIS, *Appellant*,

v.

THE REPUBLIC, *Respondent*.

(*Criminal Appeal No.* 2869)

Evidence in Criminal Cases—Premeditated murder—Evidence of identification—Believed by the trial Court—And rightly so—In view, inter alia, of the false alibi of appellant—And, also, of the inconsistent explanation given by him as to the injury on his hand—See, also, below.

Criminal Procedure—Appeal—Findings of fact made by trial Courts—Credibility of witnesses—Principles upon which the Appellate Court will disturb or not such findings—Matter now is well settled—On the totality of the evidence on record in the present case, the finding of the trial Court on the question of the identification of the appellant was neither unreasonable nor unsatisfactory—The appeal, therefore, fails.

Findings of fact—Findings made by trial Courts—Grounds upon which the Court of Appeal will interfere with such findings—See, also, hereabove.

Witness—Credibility of witnesses—See above, under Criminal Procedure.

1966
Dec. 20,
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SOTERIS
NICOLA
KOUMBARIS
v.
THE REPUBLIC

Criminal Law—Murder—Premeditated murder—Section 203 of the Criminal Code, Cap. 154, as amended by section 5 of the Criminal Code (Amendment) Law, 1964 (Law No. 3 of 1962)—See above.

This is an appeal by the appellant from his conviction by the Assize Court of Famagusta of the premeditated murder of P.C. with which he was charged. Upon his conviction the appellant was sentenced to death. The appeal turned mainly on the issue of the identification of the appellant with the gunman who killed the deceased on the basis of the evidence given by the widow of the deceased, who, admittedly, witnessed the crime.

The Supreme Court, in dismissing the appeal :—

Held, (1) the principles upon which this Court will consider on appeal findings of fact made by trial Courts, have been stated and applied in a number of cases. The position now is well settled. We need only refer to some of the cases ; they all deal with the position regarding findings made by trial Courts, and the question of credibility of witnesses : *Simadhiakos* v. *The Police*, 1961 C.L.R. 64 ; *Tofas* v. *The Republic*, 1961 C.L.R. 99 ; *Moustakas* v. *The Republic*, 1961 C.L.R. 239 ; *Zacharia* v. *The Republic*, 1962 C.L.R. 52 ; *Patsalides* v. *Afsharian*, (1965) 1 C.L.R. 134 ; *Mamas* v. *The Arma Tyres*, (1966) 1 C.L.R. 158 ; *Shioukiouroglou* v. *The Police* (1966) 2 C.L.R. 39.

(2) (HADJIANASTASSIOU, J., *dissenting*) :

We have carefully and anxiously considered the finding of the trial Court on the crucial issue of identification, in the light of the submissions made on behalf of the appellant ; and in the light of the other material on record, affecting the matter, notably the false *alibi* and the inconsistent explanation given by the appellant as to the injury on his hand. We feel no doubt in our mind on this matter of the identification, and we cannot say that the finding of the trial Court on that question was, on the totality of the evidence, either unreasonable or unsatisfactory.

(3) The appeal, therefore, fails.

Appeal dismissed.

Cases referred to :

Simadhiakos v. *The Police*, 1961 C.L.R. 64 ;

Tofas v. *The Republic*, 1961 C.L.R. 99 ;

Moustakas v. *The Republic*, 1961 C.L.R. 239 ;

Zacharia v. *The Republic*, 1962 C.L.R. 52 ;

Patsalides v. *Afsharian* (1965) 1 C.L.R. 134 ;

Mamas v. *The Arma Tyres* (1966) 1 C.L.R. 158 ;

Shioukiouroglou v. *The Police* (1966) 2 C.L.R. 39.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 17th November, 1966, at the Assize Court of Famagusta (Criminal Case No. 5384/66) on one count of the offence of premeditated murder contrary to sections 203 (1) (2) and 204 of the Criminal Code, Cap, 154, as amended by section 5 of Law 3 of 1962, and was sentenced by Georghiou, Ag. P., Kourris, D.J. and Pierides, Ag. D.J., to death.

L. Clerides with *G. Tornaritis* and *E. Efstathiou*, for the appellant.

S. Georghiades, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal from a conviction by the Assize Court of Famagusta, for premeditated murder, with which the appellant was charged, and was tried in November last.

The offence charged, according to the particulars in the information, was that " the accused on the 27th day of June, 1966, at Limnia, in the District of Famagusta, did with premeditation by an unlawful act, cause the death, of Panayiotis Charalambous, *alias* Paikkos, of Limnia ". Premeditated murder is the crime provided for in section 203 of the Criminal Code (Cap. 154) as amended by section 5 of the Criminal Code (Amendment) Law, 1962 ; and it is punishable with death. The appellant was sentenced accordingly upon his conviction on the 17th November, 1966. He now appeals against this conviction ; there is no room for an appeal against sentence, if the conviction stands.

The appellant was charged jointly with another person— his younger brother— who was acquitted at the conclusion

of the trial, under the judgment which resulted in the conviction of the appellant. The trial took fifteen long days, and it was, naturally, strongly contested. The prosecution called thirty-two witnesses ; and the defence ten, (including the appellant and his co-accused) after which the Court received further evidence from two more witnesses called in rebuttal.

The trial Court found that on the night of the 27th June, 1966, the Rural Constable of Limnia village the person named in the charge—was murdered on the main road to the neighbouring village of Ayios Serghios, while returning home on foot, at about 10 o'clock at night, in the company of his wife and three minor children who had the misfortune of witnessing the crime. The children were all below the age of eight ; the youngest still in the pram.

We find it unnecessary, for the purposes of this judgment, to go into detail as to the circumstances in which the crime was committed. They are sufficiently described in the long and detailed judgment of the trial Court.

There is no dispute as to the fact that the deceased died on the spot in consequence of bullet-wounds on his head discharged from an automatic weapon, in at least two bursts of fire ; the last and fatal one, from a very close distance, while the deceased was on the ground, and his assailant was standing close to him, determined to finish him off. Nor is it contested that the crime was committed within a short distance from the village—about a couple of hundred yards—at a time when an open-air cinema was operating, and people were still in the streets and coffee-shops. It is also a fact, that the assailant arrived at the scene of the crime in a motor car driven by another person, in which he departed after the crime.

The case for the prosecution is that the assailant was the appellant ; and that he came there for the purpose, in a two-colour Prefect car, driven by his younger brother, who was jointly charged for the murder. As we have already said, the brother was acquitted at the conclusion of the trial, on the ground that the evidence of identification regarding the driver, left a reasonable doubt on the mind of the trial Court, after deciding not to rely on the evidence of certain witnesses, seven in number, who had testified in that connection.

We do not propose going into that matter in the present judgment ; suffice it to say that on the evidence before them it was certainly open to the trial Court to make a different finding on that issue ; and reach a different verdict.

The appeal before us, turns mainly on the issue of the identification of the appellant with the gunman who killed the deceased.

Learned counsel for the appellant, ably and extensively argued his case on a number of grounds which appear in the elaborately prepared Notice. But, at this stage, we unanimously take the view that the fate of the appeal must turn on the question whether it was open to the trial Court, on the totality of the evidence before them, to accept as correct, on the issue of the identification of the appellant, the evidence of the widow of the deceased, who, admittedly, witnessed the crime. If the finding of the trial Court on this question can stand, there is, in our opinion, no substance sufficient to disturb the verdict, in the other submissions advanced on behalf of the appellant ; and we find it unnecessary to deal with them further, in this judgment.

The evidence of the widow (to whom we shall refer as " P.W. 4 " or as " the witness ") covers some 15 pages of the typed record. She was, naturally, extensively cross-examined ; particularly on the issue of identification. At this stage, after hearing able and exhaustive argument on behalf of the appellant on this issue, we are unanimously of the opinion that the good faith and the credibility of P.W. 4 cannot be put in doubt. We take the view that the trial Court were right in finding that she gave her evidence with full regard to truth, and to the best of her ability. The issue, therefore, narrows down to the question whether the finding of the trial Court that her identification of the appellant as the gunman is correct can be successfully challenged, having regard to the evidence on the record. The witness's evidence in chief, on the point, at page 13, reads :—

> " While we were going towards Limnia a car came and stopped in front of us, when we were on the road at a distance nearer to Limnia than Ayios Serghios. The motor car came and stopped in front of us and we stopped. It came from the direction of Limnia. We were walking on the left side of the road towards Limnia and the motor car came and stopped in front of us and we stopped. As soon as the car stopped, my husband (the deceased) told me that it must be our ' Koumbaros Zacharias '. We stopped and we were waiting for our best man Zacharias to appear. But instead of Zacharias, Sotiris Koumbaris (the appellant) alighted from this car from the left door of the car, stood in front of us with a gun which he pointed at

us. When Sotiris Koumbaris stood in front of us with the gun, my husband exclaimed 're re' and turned back and ran towards Ayios Serghios. Then Sotiris started running behind my husband and firing at him ..... The car was behind the murderer and it was illuminating the road. The head lamps of the car were on. As soon as the car approached my husband, my husband turned into the fields to his right and at that time the gun had an interval as if the magazine was changed. After the new magazine was put, accused No. 1 (the appellant) started firing again against my husband and then my husband fell ..... When my husband fell down on the ground accused No. 1 went over him and started shooting at him on the face. At that time neither my husband nor accused No. 1 (the appellant) spoke anything. Accused No. 1 said something when he finished and was going towards the car, but I have not understood what he said ..... While accused No. 1 was firing at my husband when my husband was lying down, the car reversed and faced in the direction of Limnia, and it came there where my husband was lying, accused No. 1 (the appellant) went in and they left towards Limnia. When I say the car came there, where my husband was lying, I mean the car came there and was in the street near the place where my husband was lying."

And later, at page 15 of the record, the witness's evidence reads :—

" At the time I saw accused No. 1 (the appellant) there was an electric pole there, and the bulb was on and also the headlights of their car were on, and the place was well illuminated. There were times when accused No. 1 (the appellant) was five paces near me and other times when he was two paces near me, and that was when I was running after him. The time I was running after accused No. 1 was the time when he started shouting (shooting ?) at my husband ".

In cross-examination, the witness stated (page 20) :

" As soon as the car stopped in front of us I did not recognise to whom it belonged. Then a person alighted from the car. Immediately he got out of the car I did not recognise him. I recognised him when he approached us and pointed the gun towards both of us. My husband at that time was on my right in the direction towards Limnia. The lights of the car at that time

were against us, I mean the headlights. At the time when he came in front of me the headlights were not blinding me, but just before when the car stopped, my eyes were blinded by the lights. I saw him in one or two seconds. Since the time of the murder of their brother, both accused were on bad terms with my husband and I recognised him when I saw him. I did not say anything to my husband. As I could see him, my husband could see him as well, and I did not warn him because immediately he remarked 're re' and started running. When I saw accused No. 1 (the appellant) I was frightened but I did not get confused as I was expecting my husband to be alive as the shots missed him. I got confused when I saw my husband falling down on the ground. He was not an unknown person. He was a person I knew . . . . , I do not know whether the distance between the electric pole and the place where my husband was lying was measured and found to be 50 ft. . . . Even if I would not see him the second time, I had already recognised him from the first time that I saw him."

It is common ground that the witness is a fairly young woman, who had been married to the deceased for nine years, and was the mother of three children, aged 8, 6 and 18 months' old. There is no allegation that her eye-sight, or anything else about her, was not normal. She was living with her husband in the same village as the appellant, who is a bachelor of about 35 years of age. There is no suggestion that she did not know the appellant. On the contrary, it is an admitted fact that ever since the time of another murder in that village, three years earlier, when a brother of the appellant was the victim, the appellant and the deceased in the present case, were on bad terms. The deceased and several of his friends, were suspected for that murder, and were kept in custody for a number of days pending investigations. There was no prosecution in connection with that crime, and suspicion continued hanging over the rival group including the deceased, ever since. The appellant was undoubtedly a person well known to the witness.

The possibility of a mistake in her identification of the assailant of her husband with the appellant, was exhaustively argued by learned counsel, both, at the trial and in the appeal. The responsibility for assessing the evidence in the first instance rests, for obvious reasons, with the trial Court ; and in this case, it is clear from the record, that the trial Court were fully conscious of that responsibility ; and that they approached this issue of identification, with all due

caution. This becomes perfectly clear from the way in which the trial Court dealt with the question of identification in connection with the person jointly charged with the appellant, as the driver of the car used for the murder.

The Assize Court, after careful consideration of the evidence as a whole affecting this issue of the identification of the appellant, and fully conscious of their responsibility in a case of this nature, found themselves satisfied both regarding the credibility of the witness, and regarding the correctness of her evidence on the point ; and they made their finding accordingly.

At page 20 of their judgment (p. 237 of the record) the Assize Court say :—

> " The evidence thus left, as far as he (the appellant) is concerned, is that of the eye-witness, Katelou (P.W.4) the victim's widow, the finding of drops of blood at the scene of the crime, the explanation which he (the appellant) gave for the injury on his hand, generally his whole conduct, at the time of his arrest at his house, soon after midnight, the night of the crime, and finally the alibi which he tried to establish."

Further down at the end of the same page (237/H) the Court say :—

> " The witness knew well the first accused (the appellant) and she saw him and was watching him all the time from the moment he came in front of her and her husband with the gun until he entered the car driven by the other person."

After dealing with the main points of the argument against the widow's evidence, the trial Court say (p. 239/A) :—

> " . . . we are satisfied from the evidence before us and from the explanations she gave in her evidence, that she neither lied, nor did she make a mistake in the identification of the first accused (the appellant) as the person who killed her husband, and we believe her."

In the final part of their judgment, the Assize Court say (p. 240) :—

> " In conclusion, we do not believe the first accused (the appellant) but we accept as true the evidence of witness Katelou (the widow) that the person who killed her husband, the victim of this murder, is none else but the first accused."

It was open to the appellant to challenge these findings on appeal, and to submit to this Court reasons for which they should be set aside. Learned counsel on his behalf made full use of the opportunity. The principles upon which this Court will consider on appeal, findings of fact made by the trial Court, have been stated and applied in a number of cases, some of which were referred to in the present appeal. The position is now well settled. For the purposes of this judgment, we need only refer to some of the cases :

Stelios Michael Simadhiakos v. *The Police* 1961 C.L.R., 64–94 ; *Christofis Vassiliou Tofas* v. *The Republic* 1961 C.L.R., 99–102 ; *Andreas Christodoulou Moustakas* v. *The Republic* 1961 C.L.R. 239–245 ; *Charalambos Zacharia* v. *The Republic* 1962 C.L.R., 52–67 ; *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; *Mamas* v. *The Arma Tyres*, (1966) 1 C.L.R. 158 ; and *Iordanis Shioukiouroglou* v. *The Police* (1966) 2 C.L.R. 35. They all deal with the position regarding findings made by the trial Court, and the question of credibility.

We have carefully and anxiously considered in the present appeal the finding of the trial Court on this crucial issue of identification, in the light of the submissions made on behalf of the appellant ; and in the light of the other material on record, affecting the matter, notably the false alibi and the inconsistent explanation as to the injury on his hand. In considering the possibility of a mistake, one of the members of this Court (Mr. Justice Hadjianastassiou) felt inclined to the view that, bearing in mind human frailty in such matters, and bearing also in mind that due to the existing enmity between the appellant and the deceased, the widow may have jumped into conclusions as to the identity of the assailant, the possibility of a mistake by the witness in question, frightened and excited as she must have been at the time, should not have been excluded by the trial Court. The other four members of this Court, however, felt no doubt in their mind on the matter, and cannot say that the finding of the trial Court on the question of identification was, on the totality of the evidence on record, either unreasonable or unsatisfactory. The appeal must, therefore, fail ; and be dismissed accordingly.

Appeal dismissed.