[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

ANDREAS ELIA LAMBIDES,
Appellant,

v.

THE POLICE,
Respondents.

(Criminal Appeal No. 2899)

Criminal Law—Criminal Trespass, contrary to section 280 *of the Criminal Code, Cap.* 154*—Trespass with intent to annoy—Unlawful entry upon property with intent to commit an offence, or to insult, or to intimidate or annoy the occupant—Test applicable—Where the real or dominant intent of the entry was to commit an offence, or to insult, or intimidate or annoy the occupant, and a claim of right was a mere cloak to cover the real intent—The offence of criminal trespass has been committed.*

Criminal Procedure—Appeal—Findings of fact made by trial Courts—Principles governing the approach of the Appellate Court to such findings—Principles laid down in a number of previous cases, adopted.

Trespass—Criminal Trespass—Unlawful entry upon property—The real or dominant intent—The claim of right being a mere cloak to cover such intent—See above under Criminal Law.

Findings of fact—Approach by the Court of Appeal—See above under Criminal Procedure.

This is an appeal against conviction for criminal trespass contrary to section 280 of the Criminal Code, Cap. 154 which covers a wide range of unlawful entries upon property with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property etc. In this case the appellant was accused of unlawfully entering the house where A.K., a girl aged 13, was living with her parents with intent to annoy her, on the 26th August, 1966, on the first count, and on the 6th September, 1966, on the second count.

The appellant pleaded 'not guilty' to both counts; and the case went to trial on the issues arising from his plea, mainly on the question of appellant's intent at the material time, and the conduct connected with such intent. The trial Judge found the accused guilty as charged on both counts and sentenced him to a term of imprisonment.

It is against this conviction that the appellant now appeals. It was argued on appeal on his behalf that the findings were against the weight of the evidence, that the trial Judge misdirected himself as to the effect and weight of the evidence and that the facts as found by him do not constitute the offence charged inasmuch as the appellant's entry upon the property in question was lawful.

The Court in dismissing the appeal :—

Held, (1) the approach of this Court to the findings of the trial Court was repeatedly stated in a number of cases where the same approach was adopted (see *Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; *Mamas* v. *The Arma Tyres* (1966) 1 C.L.R. 158). We need hardly refer to such cases specifically ; but we may mention a recent one where the Court of Appeal felt themselves bound to interfere and upset the findings of the trial Court on the ground that they were unsatisfactory in the light of the evidence on record (*Meitanis* v. *The Republic*, reported in this Part *ante* at p. 31).

(2) Bearing all that in mind we find no justification or sufficient cause for interfering with the findings made by the trial Judge in this case.

(3)—(*a*) Upon those findings, there can be no doubt that the appellant was rightly convicted. In this connection, and particularly regarding the submission that the appellant's entry on the property was lawful, we might refer to a Privy Council case from Ceylon (*Sinnasamy Selvanayagam* v. *R.* [1951] A.C. 83, P.C.). It was held in that case, that where the real or dominant intent of the entry was to commit an offence, or to insult, or intimidate or annoy the occupant, and that a claim of right was a mere cloak to cover the real intent, the offence of criminal trespass had been committed.

(*b*) In the case in hand, the trial Judge found that the predominant intention of the appellant was to explore the possibilities of a sexual adventure with the girl, cloaked under the pretence of giving her advice against her flirtations with boys.

(4) For the above reasons, the appeal must fail and is hereby dismissed ; sentence to run from the hearing of the appeal on the 14th April, 1967.

Appeal dismissed. Sentence to run as stated above.

Cases referred to :

Sinnasamy Selvanayagam v. *R.* [1951] A.C. 83, P.C., *applied ;*

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

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

Meitanis v. *The Republic*, (reported in this Part, *ante*, at p. 31). *Principles laid down in the three preceding cases with regard to the approach by the Court of Appeal to the findings of fact made by trial Courts, followed.*

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 20th March, 1967, at the District Court of Paphos (Criminal Case No. 2531/66) on two counts of the offence of criminal trespass contrary to section 280 of the Criminal Code, Cap. 154 and was sentenced by Papadopoullos, D.J., to three months' imprisonment on each count, the sentences to run concurrently.

E. Ieropoulos with *A. Triantafyllides*, for the appellant.

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

Cur. adv. vult.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against conviction for criminal trespass on two different counts, each count referring to a different occasion. Both counts are preferred under section 280 of the Criminal Code (Cap. 154) which covers a wide range of unlawful entries upon property with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. It also covers cases of continued presence upon property lawfully entered, such presence becoming unlawful by being continued with intent to intimidate, insult or annoy ; or to commit an offence.

The range of conduct covered by the section being so wide, the charges preferred thereon, must allege the particular behaviour which is the subject matter of each charge. In this case the appellant was accused of entering the house where Anastassia Kyriakou, a girl aged 13, was living with her parents, on the 26th August, 1966, with intent to annoy her ; and of entering the same house with the same intent about a fortnight later, on the 6th September.

The appellant pleaded " not guilty " to both counts ; and the case went to trial on the issues arising from his plea, mainly on the question of appellant's intent at the material time, and the conduct connected with such intent.

The case for the prosecution, is that the appellant, a married man of the age of 45 and the father of three minor children (aged 13, 11 and 5 years), a close relative of the girl's mother (first cousin) went to their house to find the young girl alone on the first occasion, and taking advantage of the situation, embarked on indecent and scandalous oral advances to the girl which, naturally, annoyed her ; and, of course, would annoy and upset the girl's parents when they would come to know about it. The events on the subsequent occasion, the subject matter of the second count, are practically a later stage of the same story, and apart of their evidential value, they constitute in substance one and the same crime.

The case for the appellant, is that he went to the house in question as a close relative, in order to advise the girl against frivolities and flirtations with boys which had come to his notice. He denies that he went beyond what was necessary for such purpose ; and he strongly refutes the allegation that he used indecent language, or acted improperly in any way.

Appellant's own story on oath from the witness box, as recorded at p. 22F, of the notes, *et seq.*, is as follows :—

> " In about May, 1966, I received an information from Demetrakis Christodoulou. The following day Demetrakis also told me something. As a result I met Despina (the girl's mother) and I told her that her daughter had a love affair with Elias Stavrou.
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> ... .
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> Anastassia (the girl) came to my shop and received her letters. I told Demetrakis Christodoulou that Anastassia had been receiving letters. I saw Anastassia talking with Elias Stavrou. They talked by themselves. I saw her in about June and July. I saw her at the village cross-roads 2–3 times on her return from school . . . A few days before the 26.8.1966 I saw her in the bye-road near the yard of Fotini Georghiou in which yard I saw Elias Stavrou . . . . I decided to advise her for it and tell her parents if I found them. I went to see her about it on the 26th August, 1966, and spoke

to her. But what she alleged that I told her is an utter lie . . . I found her alone. I asked her for her mother. I knew that her father was away collecting carobs."

We find it unnecessary to go in detail into the version of the girl regarding what happened on that occasion. We prefer to take it in the very short summary in which the trial Judge put it in the first part of his judgment :

> " Accused according to the allegations of this witness (the girl) used obscene language about various women and in particular he expressed his wish to have sexual intercourse with them . . . He then spoke of some love affairs of his earlier life, his experiences on the wedding night and his present sexual experience and his wife's reaction on intercourse. Furthermore at the end he pulled down his trousers . . . The witness stated that she repeatedly asked the accused to go away and leave her alone and she would tell her mother about these things, but he would not leave. He only left after he had exposed his private parts and the girl went in the yard where she remained and asked him to leave."

Besides the young girl (whose evidence covers over five pages, more than two of which in cross-examination) the prosecution called the girl's mother (P.W. 2) who gave evidence of the girl's complaints to her in connection with the events of the 26th August. The prosecution also called the Policeman who took an open statement from the accused on the 13th September, 1966. When called upon for his defence, the accused elected to give evidence on oath (pages 22–26) ; and called a witness regarding the events on the second occasion, the offence charged in the second count.

As one would expect in a case of this nature, counsel for the accused mainly based his argument at the trial, on the danger of acting on the evidence of the young girl in a case of this nature. Counsel also went very carefully and thoroughly into the discrepancies between the evidence of the girl and that of her mother. And, judging from what appears in the judgment, counsel seems to have taken every point which could be used in order to raise a doubt in the mind of the trial Judge regarding the credibility of the witnesses, and the version of the prosecution.

In a long and detailed judgment, the trial Judge dealt both with the evidence in the case, and the submissions made on behalf of the accused. He then had this to say (page 40F) :

> " What I have gathered from the evidence adduced in Court is this : Accused saw the complainant talking with a boy and she might have received some letters. Accused considered that the girl was starting flirting. He went to her house on the 26.8.66 when he well knew that he might find her alone there. He went with the pretence of advising her not to have any flirtations and he did actually behave in the manner the complainant alleged. It was carob season when all people go to collect their carobs. The chances of anybody dropping in were almost non-existent . . ".

And at page 41C, the Judge continued :—

> " It is significant to note here the process of conversation and general behaviour of the accused. I have no doubt in my mind that accused wanted to have immoral relations with the girl. I infer this from the conversation they had. It was the aim of the accused to excite the girl first . . . And then he proceeded and he started using obscene language, he went further on to speak of his amorous achievements . . . ".

Towards the end of his judgment (page 41 G) the Judge says :

> " He knew that the girl was getting mature, her sexual instinct was awakening, and he tried to get advantage of her age, inexperience and innocence . . . ".

And at page 42 C, the trial Judge concludes :—

> " From the above stated reasons I have no doubt in my mind that the prosecution proved the case against the accused for both counts. There is no room, in my view, for legal doubt. For the above reasons I find the accused guilty as charged on both counts."

The appeal was strenuously argued before us on the grounds stated in the carefully prepared notice ; they may be summarised under three heads : (*a*) the findings were against the weight of the evidence ; (*b*) the Judge misdirected himself as to the weight and effect of the evidence ; and (*c*) the facts as found by the trial Court do not constitute the offence charged.

The approach of this Court to the findings of the trial Court was repeatedly stated in a number of cases where the same approach was adopted. (*Patsalides* v. *Afsharian* (1965) 1 C.L.R. 134 ; *Mamas* v. *The Arma Tyres* (1966) 1 C.L.R. 158). We need hardly refer to such cases specifically ; but we may mention a recent one, *Demetris Nicola Meitanis* v. *The Republic* (reported in this part at p. 31 *ante*) where the Court of Appeal felt themselves bound to interfere and upset the findings of the trial Court on the ground that they were unsatisfactory in the light of the evidence on record in that case.

Bearing all that in mind, and after considering carefully the submissions of learned counsel for the appellant regarding the findings of the trial Court in this case, we find no justification or sufficient cause for interfering with them. We are unanimously of opinion that it was open to the trial Judge to find as he did, on the evidence before him. And we think that there is no substance in the submission that the trial Judge misdirected himself as to the effect or the weight of the evidence.

Upon those findings, there can be no doubt that the appellant was rightly convicted on the two counts in the charge. In this connection, and particularly regarding the submission that the appellant's entry on the property was lawful, we might refer to a Privy Council Case from Ceylon, discussed in paragraph 10488 of the Current Law Consolidation 1947–1951, where the original entry to the property was made under a claim of right. It was held in that case, that where the real or dominant intent of the entry was to commit an offence, or to insult, or intimidate, or annoy the occupant, and that a claim of right was a mere cloak to cover the real intent, the offence of criminal trespass had been committed. (*Sinnasamy Selvanayagam* v. *R.* [1951] A.C. 83, P.C.).

In the case in hand, the trial Judge found that the predominant intention of the appellant was to explore the possibilities of a sexual adventure with the girl, cloaked under the pretence of giving her advice against her flirtations with boys.

As we have already said, we have not been persuaded that there is sufficient reason for interfering with the trial Court's findings, regarding the main facts constituting the offences charged. On such findings we have no hesitation in holding that the appeal against conviction must fail. Appeal dismissed ; sentence to run from the hearing of the appeal on the 14th April, 1967.

Appeal dismissed. Sentence to run as stated above.