

1967
May 4
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NICOS A.
POLYKARPOU
v.
THE POLICE

[VASSILIADES, P., TRIANTAFYLIDIS AND LOIZOU, JJ.]

NICOS A. POLYKARPOU,

Appellant.

v.

THE POLICE

Respondents

(*Criminal Appeal No. 2901*)

— — — — —
Criminal Procedure—Plea—Plea of guilty—Inconsistent with the facts put forward by appellant's advocate, in mitigation—Appeal against sentence treated by consent of the parties, as an appeal against conviction—Conviction set aside and retrial ordered.

Criminal Procedure—Sentence—Appeal against sentence—Treated by consent of parties, as an appeal against conviction.

Retrial—See under Criminal Procedure, above.

In this appeal against sentence it appeared from the record that the plea of 'guilty' entered by the appellant was inconsistent with the facts put forward in mitigation. Counsel appearing for the prosecution, guided by the case of *Attorney-General v. Sidki Mahmout*, 1962 C.L.R. 181, did not object to a retrial.

Held, by consent of the parties, this appeal shall be treated as an appeal against conviction ; the conviction shall be set aside following the same course as in the case of *Attorney-General v. Sidki Mahmout (supra)* ; with an order for retrial before another Judge.

Appeal allowed. Conviction set aside. New trial ordered as aforesaid.

Cases referred to :

Attorney-General v. Sidki Mahmout, 1962 C.L.R. 181.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 27th March, 1967, at the District Court of Famagusta (Criminal Case No. 4538/66) on one count of the offence of destroying antiquities contrary to

section 10 (1) (a) of the Antiquities Law, Cap. 31, as amended by Law 48/64 and was sentenced by Kourris, D.J., to pay a fine of £7.

Cl. Antoniadēs, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

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The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against sentence. The record shows, however, that the plea of "guilty" entered by the appellant on the advice of his advocate, on the fifth hearing of the case, is inconsistent with the facts put forward on his behalf by his advocate, in mitigation. The facts alleged in mitigation are consistent with appellants' original plea of "not guilty".

Mr. Frangos is not before the Court today to meet an appeal against conviction ; he is here to answer the appeal in the notice which is an appeal against sentence. Nevertheless, in the circumstances, and guided by the report in *The Attorney-General v. Sidki Mahmout*, 1962 C.L.R. p. 181, took the very fair stand of not objecting to a retrial.

In view of the fact that this case is going to be tried again, we should abstain from saying anything more regarding the facts or the merits of the case. We, moreover, think that the case should be tried by a different Judge.

By consent of the parties, this appeal shall be treated as an appeal against conviction ; the conviction shall be set aside following the same course as in the case referred to above ; with an order for retrial before another Judge.

Appeal allowed. Order accordingly.

Appeal allowed. Conviction set aside. New trial ordered as aforesaid.