DEMETRIS NICOLA MEITANIS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 2845)

Trial in Criminal Cases—Evidence—Corroboration—Sexual offences—Conviction on the uncorroborated evidence of the complainant—Set aside in the special circumstances of this case—Corroborative evidence—Evidence not implicating the accused does not in law amount to corroboration—Offences of defilement of a girl under thirteen and incest, contrary to sections 153 (1) *and* 147 *of the Criminal Code, Cap.* 154, *respectively.*

Evidence — Evidence in criminal cases — Corroboration — Sexual offences—See above ; see, also, under the headings which follow.

Corroboration—See above ; see, also, below.

Criminal Procedure—Appeal—Findings of fact by trial Courts—Set aside by the Court of Appeal on the ground that such finding is unsatisfactory in the light of the evidence considered as a whole—And conviction based on such finding quashed as being unreasonable within the meaning of section 145 (1) *of the Criminal Procedure Law, Cap.* 155—*See, also, herebelow.*

Criminal Procedure—Appeal—Evidence—Corroboration—Evidence not implicating appellant-accused erroneously treated as amounting to corroboration—No substantial miscarriage of justice—Inasmuch as the trial Court would have inevitably come to the same conclusion as to the guilt of the accused—Therefore, conviction not disturbed—Proviso to section 145 (1) (*b*) *of the Criminal Procedure Law, Cap.* 155.

Miscarriage of justice—No miscarriage of justice as a result of wrongful admission of evidence—Section 145 (1) (*b*) *proviso, of Cap.* 155 (supra)—*See under Criminal Procedure immediately above.*

1966
Nov. 15,
1967
Feb. 28

DEMETRIS
NICOLA
MEITANIS
v.
THE REPUBLIC

This is an appeal by the appellant against his conviction on the 30th September, 1966, by the Assize Court of Kyrenia, on an information containing two counts as follows :

Count 1 : That between the 21st day of September, 1964, and the 31st December, 1964, he did unlawfully and carnally know Maria . . . . . , a female under the age of thirteen, contrary to section 153 (1) of the Criminal Code, Cap. 154 ; and

Count 2 : that between the 1st May, 1966, and the 1st July, 1966, he did have carnal knowledge of the said Maria, who is and was to his knowledge his daughter—contrary to section 147 of the Criminal Code.

In respect of the first count he was sentenced to nine years' imprisonment, and in respect of the second count to six years' imprisonment, both sentences to run concurrently.

In convicting the appellant on count 1 the Assize Court, having warned itself of the desirability for corroboration, decided to act on Maria's evidence, even though it was uncorroborated. Regarding count 2, the trial Court stated that it would have been again prepared to act on Maria's uncorroborated evidence, but that this did not prove necessary because her evidence was corroborated by other material evidence given at the trial. It seems that some of the evidence treated by the trial Court as corroborating the girl's evidence could not properly be regarded as evidence "implicating" the accused (appellant) and, therefore, could not in law be regarded as corroboration of her evidence.

In quashing the conviction on count 1 *i.e.* the charge for defilement of a girl under the age of thirteen, and dismissing the appeal as regards count 2 *i.e.* the charge for incest, the Court :–

Held, (1)—(*a*) having duly considered everything that has been submitted by counsel and having been through the record, we are not prepared to disagree with the conclusion of the trial Court on the issue of the truthfulness of the girl. Any discrepancies and exaggerations existing in her evidence are not such as would entitle us to differ from the finding as to her truthfulness made by the trial Court, which had the advantage of following her demeanour while in the witness-stand.

(*b*) What remains for us to consider, next, in this appeal, is whether or not the trial Court, in convicting the appellant, has correctly evaluated the reliability of Maria's evidence from the point of view of accuracy, as distinct from her truthfulness.

(2)—(*a*) In the light of all the evidence on record, we are of the view that the trial Court was entitled to decide that the evidence of Maria was reliable enough to warrant the conviction of the appellant on count 2 beyond reasonable doubt. Moreover, there existed, as found by the trial Court, corroboration of the relevant evidence of Maria.

(*b*) We must say, however, that the trial Court proceeded to include in the evidence, which it has treated as corroborating the evidence of Maria, some evidence (as *e.g.* the evidence of the Doctor) which could not properly be regarded as being evidence "implicating" the appellant, in the sense of the principle of *R.* v. *Baskerville* (12 Cr. App. R. 81, at p. 91); bearing in mind, however, that, as stated in its Judgment, the trial Court would have been prepared to act even on the uncorroborated evidence of Maria, and that, in any case, there was other evidence properly corroborating her evidence (*see R.* v. *King* [1967] 1 All E.R. 379) we are of the opinion that the fact that the trial Court erroneously treated certain evidence as amounting in law to corroboration, has not led actually to any substantial miscarriage of justice.

(*c*) We are satisfied, without doubt, that the trial Court would have convicted the appellant on count 2 (the count on incest) even if it had not included among the corroborative evidence that evidence which in our view did not amount to evidence implicating the appellant in the commission of the offence charged on count 2. (See *Stirland* v. *Director of Public Prosecutions* [1944] 2 All E.R. 13, at p. 15). In view, therefore, of the proviso to section 145 (1) (*b*) of the Criminal Procedure Law, Cap. 155, this appeal cannot be allowed on such a ground.

(*d*) Thus, the appeal against the conviction on count 2 fails and is hereby dismissed.

(3) Dealing now with the conviction on count 1:

(*a*) This is the count on which the appellant was convicted on the uncorroborated evidence of the complainant Maria.

(*b*) It must not be lost sight of that the exact time at which the incident, which forms the basis of count 1, took place

is a matter which had to be established beyond reasonable doubt by the prosecution, as being an essential element of the offence charged, inasmuch as such offence could not have been committed after the 25th March, 1965, when the girl became thirteen years old.

(*c*) *After reviewing the evidence on this point:* We are of the opinion that it was not safe in the least for the trial Court to find that the incident, which forms the basis of count 1, occurred either in November or December, 1964.

(*d*) We have, thus, reached the conclusion that this Court is entitled to interfere with the above finding of the trial Court and to upset such finding on the ground that it is an unsatisfactory one in the light of the evidence when considered as a whole (see the authorities reviewed recently in *Koumbaris* v. *The Republic* (reported in this vol. at p. 1 *ante*).

(*e*) The conviction, therefore, on count 1 has to be set aside as being unreasonable in the sense of the provisions of section 145 (1) of the Criminal Procedure Law, Cap. 155.

(4) In the result this appeal succeeds as against the conviction on count 1 but it fails and is dismissed as against the conviction on count 2. As the appellant has been partly successful, we order that the sentence imposed on count 2 should run from the date of conviction thereon.

Appeal allowed in part. Sentence on count 2 to run as stated above.

Cases referred to :

R. v. *Baskerville* 12 Cr. App. R. 81, at p. 91 applied ;

R. v. *King* [1967] 1 All E.R. 379 ;

Stirland v. *Director of Public Prosecutions* [1944] 2 All E.R. 13, at p. 15, *applied* ;

Koumbaris v. *The Republic* (reported in this vol. at p. 1 *ante*).

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 30th September, 1966, at the Assize Court of Kyrenia (Criminal Case No. 1047/66) on 2 counts of the offences of defilement of a girl under thirteen and of incest, contrary to sections 153 (1) and 147 of the Criminal Code Cap. 154, respectively, and was sentenced by Loizou, P.D.C., Mavrom-

matis and Savvides, D.JJ., to 9 years' imprisonment on count 1 and 6 years' imprisonment on count 2 the sentences to run concurrently.

K. Saveriades, for the appellant.

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

Cur. adv. vult.

The judgment of the Court was delivered by :

TRIANTAFYLLIDES, J.: This is an appeal against the conviction of the appellant, on the 30th September, 1966, by the Assize Court in Kyrenia, on an information containing two counts as follows :

First, that between the 21st day of September, 1964 and the 31st December, 1964, he did unlawfully and carnally know Maria Demetri Meitani, a female under the age of thirteen—contrary to section 153 (1) of the Criminal Code (Cap. 154) ; and

Secondly, that between the 1st May, 1966 and the 1st July, 1966, he did have carnal knowledge of the said Maria, who is and was to his knowledge his daughter—contrary to section 147 of the Criminal Code.

In respect of the first count he was sentenced to nine years' imprisonment, and in respect of the second count to six years' imprisonment, both sentences to run concurrently.

The appellant appealed on his own, from prison, against his conviction. By a notice of appeal, containing supplementary grounds of appeal and filed by counsel who was appointed, at appellant's request, to appear for him in this appeal, an appeal against sentence was also made ; however, at the hearing of the appeal, counsel for the appellant did not press the appeal against sentence and, therefore, such appeal is to be deemed as having been withdrawn. It is hereby dismissed accordingly.

The appellant is a married man, fifty-five years old, and his family consists of his wife and seven children ; the family home is at Karmi village. One of the appellant's children is the aforesaid Maria, the complainant, who was born on the 25th March, 1952.

In convicting the appellant on count 1, the trial Court, having warned itself of the desirability for corroboration, decided to act on Maria's evidence, even though it was

uncorroborated. Regarding count 2, the trial Court has stated that it would have been again prepared to act on Maria's uncorroborated evidence, but that this did not prove necessary because her evidence was corroborated by other material evidence given at the trial.

The line adopted by counsel for appellant in arguing this appeal—and we must say that he has done so very ably and conscientiously—has been that it was not safe for the trial Court to rely, and convict, on the evidence of Maria, in view of discrepancies and exaggerations in such evidence, and in view of her having been contradicted, in some respects, by other evidence ; furthermore, that, with regard to count 2, the trial Court erroneously treated certain other evidence as being corroboration, when in fact it was not.

The trial Court has stated, in a long and carefully reasoned judgment, that it was satisfied, beyond doubt, as to the truthfulness of the testimony given by Maria and that it was impressed by her maturity in appearance and mind.

Having duly considered everything that has been submitted by learned counsel, both for appellant and for respondent, and having been through the record of this appeal, we are not prepared, as a Court of appeal, to disagree with the conclusion of the trial Court on the issue of the truthfulness of Maria. Any discrepancies and exaggerations existing in her evidence are not such as would entitle us to differ with the finding as to her truthfulness made by the trial Court, which had the advantage of following her demeaneour while on the witness-stand.

It is quite correct that Maria had stated, at first, to her elder sister Niki, that it was her brother Nicos who was responsible for her defloration, and she did not implicate the appellant at all ; and it is not in dispute that Nicos was in the habit of assaulting his sister indecently with his finger. Later on, however, Maria—having been pressed by Niki to tell the whole truth—disclosed also the role in the matter of her father, the appellant. In the light of the particular circumstances of this case we think that the belated of the incrimination of the appellant by Maria is not a factor which suffices to lead us to the conlusion that we should interfere with the finding of the trial Court as to the truthfulness of Maria when giving evidence before it.

What remains for us to consider, next, in this appeal, is whether or not the trial Court, in convicting the appellant,

has correctly evaluated the reliability of Maria's evidence from the point of view of accuracy, as distinct from her truthfulness.

It is convenient to deal, first, with the conviction on count 2 :

This count refers to an incident which took place in June, 1966, in a beach-house at Ayios Georghios—near Karmi—at the appellant's place of work ; according to Maria, on that occasion full sexual intercourse took place between her and her father, the appellant.

We are of the view, in the light of all the evidence on record, that the trial Court was entitled to decide that the evidence of Maria, regarding the incident in question, was reliable enough to warrant the conviction of the appellant on count 2 beyond any reasonable doubt. Moreover, there existed, as found by the trial Court, corroboration of the relevant evidence of Maria.

We must say, while on this point, that we are of the opinion that the trial Court proceeded to include in the evidence, which it has treated as corroborating the evidence of Maria, some evidence (as *e.g.* the evidence of Dr. D. Theoclitou) which could not properly be regarded as being evidence " implicating " the appellant, in the sense of the principle of *R.* v. *Baskerville* (12 Cr. App. R. 81, at p. 91) ; bearing in mind, however, that, as stated in its judgment, the trial Court would have been prepared to act even on the uncorroborated evidence of Maria, and that, in any case, there was other evidence properly corroborating her evidence (see *R.* v. *King*, [1967] 1 All E.R. p. 379) we are of the opinion that the treatment by the trial Court of certain evidence as amounting to corroboration, when in fact such evidence could not so be treated, has not led actually to the occurrence of a substantial miscarriage of justice. We are satisfied, without doubt, that the trial Court would have convicted the appellant on count 2 even if it had not included among the evidence, which it treated as corroborating the evidence of Maria, that evidence which in our view did not amount to evidence implicating the appellant. (See *Stirland* v. *Director of Public Prosecutions*, [1944] 2 All E.R., p. 13, at p. 15). In view, therefore, of the proviso to section 145 (1) (*b*) of the Criminal Procedure Law, Cap. 155, this appeal cannot be allowed on such a ground.

Thus, for all the foregoing reasons, the appeal against the conviction of appellant on count 2 fails and is hereby dismissed.

We pass on, next, to deal with the conviction on count 1 :

This is the count on which the appellant was convicted on the uncorroborated evidence of the complainant, Maria.

The incident to which this count relates took place at the family home at Karmi, some time after September, 1964, when Maria had returned to live with her parents—having previously lived away from the village, for two years, with her elder, and married, sister Niki.

Actually, the trial Court found in its judgment that the said incident took place in November or December, 1964, on a date unknown.

According to the evidence of Maria, she was sleeping at the time in a room on the first floor of the family home ; in such room there were two beds and she was sharing one of the beds with her younger brother Lakis. The appellant, according to her story, entered the room at night, ordered her to the other bed, which was empty, and proceeded to have sexual intercourse with her.

Though, of course, defloration is not an essential element of the offence charged in count 1, the evidence of Maria is that it was on this occasion that she was deflowered; it was the first time that she was having sexual intercourse with anyone. She has stated that her father, the appellant, was holding, at the time, a big knife with which he scared her into submission.

As stated in the judgment of the trial Court, the complainant did not mention anything about this knife at the preliminary inquiry, but at the trial she claimed that she had mentioned the matter to the Police. The trial Court decided to ignore completely the allegation about the knife and took the view that this was a discrepancy which did not affect the complainant's credibility, because it might be " easily explained by the fact that she wanted to magnify the extent of her fear before allowing her father to deflower her ".

Notwithstanding the lenient view which the trial Court has taken of Maria's conduct in introducing at the trial this knife theme, we would be inclined to think that such conduct is a factor which has to be borne in mind in considering whether or not it was safe to convict on count 1 on her uncorroborated evidence alone.

Let us, now, proceed to examine another aspect of the reliability of Maria's evidence, before deciding, finally whether or not the conviction on count 1, as based on her evidence, should be upheld :

It is an essential element of the offence to which count 1 relates that the incident in question must have taken place before the 25th March, 1965, when Maria became thirteen years old ; otherwise no conviction on count 1 would be possible under section 153 (1) of the Criminal Code.

As found by the trial Court the said incident took place in November or December, 1964. This finding was made on the strength of the uncorroborated evidence of Maria. Was such evidence reliable enough, in the light of all the evidence before the Court, considered as a whole ?

It appears to have been the case of the prosecution at the trial that, when the aforesaid incident of the defloration of Maria took place, the only members of the family living in the house at Karmi were the appellant, his wife, and three of their children, namely, Maria and her two brothers Nicos and Lakis. The appellant, his wife and Nicos were sleeping in the ground floor, and Maria and Lakis were sleeping in a room on the first floor.

Earlier on, another brother, Andreas, used to share with them the same room, sleeping in the other bed, which was empty on the night of Maria's defloration, but he had found employment in Nicosia and left the family home.

Actually, according to the evidence of Nicos, Lakis moved to the upstairs bedroom, to sleep there with Maria, only *after* Andreas had left for Nicosia.

Maria's younger brother, Lakis, stated in his evidence that, while Andreas was in the village, Andreas used to sleep in the other bed in the upstairs room in which he—Lakis—and Maria were sharing a bed.

So, it was very material to know, as accurately as possible, the time when Andreas left the village for Nicosia ; it is as from such time onwards that the defloration incident, to which, count 1 relates, must have taken place.

Maria, herself, has stated at first in her evidence that her brother Andreas left the village " last summer "—and she stated this when she was giving evidence at the end of September, 1966 ; as it is quite clear that Andreas had left much earlier than the summer of 1966, one might safely assume that what Maria meant by " last summer " was the

summer of the preceding year, *i.e.* the summer of 1965; later on in her evidence Maria said; "my brother Andreas left the house one and a half years ago", which would mean that he had left around the end of March, 1965. Then, when cross-examined further, she stated that she was certain that in the last months of 1964, Andreas was not at Karmi, and that he only stayed there for about one month after her return home, at the commencement of the school-year; she insisted that it was not correct that Andreas had left in the summer of 1965.

Another brother, Nicos, stated twice in his evidence that Andreas had left about a year and a half ago—*i.e.* around the end of March, 1965.

The appellant while giving evidence in his own defence stated that Andreas had left home for Nicosia in June or July, 1965.

Andreas, himself, when called as a witness for the defence, stated that he had been working in Nicosia for, may be, a year and a half. He first said that he had left the village in the summer of 1964; then he said that he left in the summer after his sister, Maria, had returned to live at home—which shows that it could not have been in the summer of 1964, but in the summer of 1965, when he left for Nicosia, because Maria returned home in the autumn of 1964. When he was pressed to try and be more accurate, he said that it was through adding up together the periods during which he had been working in Nicosia, with two different employers, that he had said that he had left the village about a year and a half before the date of the trial; he said that he had spent one Christmas and two Easters in Nicosia, and that he was certain that he had left in the summer, it being very hot at the time.

The trial Court found that Andreas was either "too shocked by the case or too reluctant to give evidence" and it did not treat his testimony as being reliable regarding the time at which he had left the village for Nicosia.

We are not able to agree with the approach of the trial Court to the question of the reliability of the evidence of Andreas, regarding the time at which he left the village for Nicosia, because, even though his recollection might have appeared to be a not very definite one, his estimate that he had left the village about a year and a half before the date of the trial coincided with all the other evidence in the case, except part of the evidence of Maria who, however, had also stated, herself, at one stage, that Andreas had left about a year and a half ago.

It must not be lost sight of that the exact time at which the incident, which forms the basis of count 1, took place, is a matter which had to be established beyond reasonable doubt by the prosecution, as being an essential element of the relevant offence, inasmuch as such offence could not have been committed after the 25th March, 1965, when Maria became thirteen years old.

As such incident took place when Andreas was no longer sleeping with Maria in the upstairs room—having left earlier the family home at the village to work in Nicosia—it follows that the trial Court, in fixing the time of such incident as being a date in November or December, 1964, relied solely on one out of three different statements in Maria's evidence namely, that Andreas had left the village in the last quarter of 1964, soon after Maria had come back home, at the commencement of the school-year (in September)—even though Maria herself had stated elsewhere in her evidence that Andreas had left home in the summer of 1964 (meaning 1965) and, elsewhere in her evidence, that he had left a year and a half before the date of the trial, *i.e.* at about the end of March, 1965.

The trial Court, in preferring, out of the above-mentioned three versions of Maria, the one which placed the departure of Andreas at some time before the end of 1964, disregarded all the other relevant evidence in the case, both for the prosecution and for the defence, which spoke about Andreas having left the village about a year and a half before the date of the trial, *i.e.* around the end of March, 1965, and, thus, accepted one of the three different statements of Maria on the point, which was at variance even with other parts of her own evidence.

We are of the opinion, therefore, that it was not safe, in the least, for the trial Court, to find that the incident, which forms the basis of count 1, *and which took place after the departure of Andreas*, occurred in November or December, 1964, and that, consequently, Andreas must have left for Nicosia before then.

We have, thus, reached the conclusion that this Court is entitled to interfere with the above finding of the trial Court and to upset such finding on the ground that it is an unsatisfactory one in the light of the evidence in this case when considered as a whole (see the authorities reviewed recently in *Koumbaris* v. *The Republic*, (reported in this part at p. 1 *ante*).

Moreover, and for the same reasons as above, no safe finding could have been made by the trial Court that Maria's brother Andreas departed from the village before the end of March, 1965, and that, thus, the aforesaid incident, which forms the basis of count 1, could have taken place at any time after the end of 1964 and before Maria's thirteenth birthday, on the 25th March, 1965.

Nor could it be said that the defloration of Maria, by the appellant, may have taken place while her brother Andreas was still at the village, but not sleeping with her in the upstairs room, because both Maria and her brother Nicos were definite, in giving evidence, that so long as Andreas was staying at the house at the village he was always sleeping in the upstairs room in which the said defloration took place ; so, if when such defloration occurred Andreas was not sleeping in the said room it means that this was at a time after his departure for Nicosia.

The conviction, therefore, on count 1 has to be set aside as being unreasonable, in the sense of the provisions of section 145 (1) of Cap. 155 ; the sentence imposed in relation to such conviction is set aside, too.

In the result this appeal succeeds as against the conviction on count 1 but it fails and is dismissed as against the conviction on count 2. As the appellant has been partly successful, we order that the sentence imposed on count 2 should run from the date of conviction by the trial Court.

Appeal allowed in part. Sentence on count 2 to run as stated above.