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

COSTAS ANDREA KOKKINOS AND ANOTHER,
Appellants,

v.

THE POLICE,
Respondents.

(*Criminal Appeals* 3040 *and* 3041)

Criminal Procedure—Appeal—Supplementary grounds of appeal sought to be filed on day of hearing—Criminal Procedure Rules, rule 24 (1).

Criminal Law—Stealing—Pledging of Articles—Intent to steal—Criminal Code, Cap. 154, *sections* 262 *and* 20.

Appeal—Supplementary grounds of Appeal—See under Criminal Procedure above.

Grounds of Appeal—Supplementary Grounds of Appeal—See under Criminal Procedure above.

The facts sufficiently appear in the judgment of the Court.

Appeal against conviction.

Appeal against conviction by Costas Andrea Kokkinos and Nicos Antoniou who were jointly convicted on the 27th September, 1968, at the District Court of Nicosia (Criminal Case No. 15842/68) of the offence of stealing contrary to sections 262 and 20 of the Criminal Code, Cap. 154 and appellant No. 1 was further convicted of the offence of taking and driving away a motor car without the consent of the owner and of using the said vehicle without having an Insurance Policy in force, contrary to section 8 of the Motor Vehicles and Road Traffic Law, Cap. 332 and section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, respectively and were sentenced by Vakis, D.J., as follows :—

Appellant No. 1 : 18 months' imprisonment on the stealing count, 6 months' imprisonment on the second count and 3 months' imprisonment on the third count, the sentences to run concurrently.

Appellant No. 2 : 12 months' imprisonment on the stealing count.

E. Efstathiou, for appellant No. 1.

G. Tornaritis, for appellant No. 2.

M. Kyprianou, Counsel of the Republic, for the respondents.

The following ruling was delivered by :

VASSILIADES, P.: Counsel for the appellants in these two appeals (which arise in the same case) lodged today supplementary grounds to complete the notices filed from prison by the appellants in person, where the only ground given is that they are innocent.

There have been cases where the filing of supplementary grounds was allowed, even at the opening of the appeal, where such course was found helpful in dealing with the appeal ; but we feel that we have to guard against the establishment of a practice of readily allowing the filing of grounds of appeal at the last moment ; especially where such course tends to create a position different to that presented in the original notice. In this connection one should not lose sight of the provisions in rule 24 (1) of the Criminal Procedure Rules.

In the circumstances of the present case, we do not feel inclined to allow the filing of supplementary grounds at this late stage. Counsel can argue the appeal on the general ground that the appellants are innocent, for what such ground may be worth.

Counsel agreed that the two appeals be heard together.

Court : Directions accordingly.

....

The judgment of the Court was delivered by :

VASSILIADES, P. : Having heard counsel for both appellants, we found it unnecessary to call on the other side. There is no merit whatsoever in either of these two appeals. They are both taken against conviction ; and the question of sentence does not arise. Very rightly, in our opinion, counsel abandoned the attempt to reopen the question of sentence.

The facts of the case are hardly in dispute ; and they appear quite clearly and sufficiently in the judgment of the learned trial Judge.

In the morning of May 14, 1968, the appellant in appeal No. 3040 (to whom we shall refer as the first appellant) took complainant's car without his knowledge or consent, and drove the appellant in appeal No. 3041 (to whom we shall refer as the second appellant) with a woman-friend, from Nicosia to Kyrenia, apparently for a pleasure drive and a day out. Neither of the appellants had any money with him—at least as far as the evidence goes—but nevertheless, they went to a restaurant for a meal; and later to a petrol station to put petrol in their tank to enable them to make the return journey. To cover the bills so created, the appellants pledged, on each occasion, a watch taken from a case found in the car and apparently belonging to the car's owner. The case is said to have contained about 22 watches, presumably found there in connection with their owner's business. Returning to Nicosia, the appellants abandoned the car ; and when traced by the Police soon after, they said that they never intended stealing the car or the watches.

They were prosecuted on a charge containing three counts, on which both appellants were jointly charged. These were : (1) stealing the car and the watches ; (2) taking and driving the car away without the consent of the owner ; and (3) using the vehicle without having an insurance policy in force, as required by section 3 of the Motor Vehicles (Third Party Insurance) Law.

Both appellants handled their case personally at the trial. And the Judge, after hearing nine witnesses called by the prosecution, and both the accused (who elected to give evidence when called upon in due course) gave a considered judgment, where he dealt with the evidence and the questions of law arising in the case.

Regarding the stealing of the car, the learned trial Judge took the view that the evidence was not such as to justify a finding that the accused had at any time formed the intention of permanently depriving the owner of his property in the car. But the Judge found both appellants guilty of stealing the two watches. He also found the first appellant, who drove the car, guilty on counts 2 and 3 ; and acquitted the second appellant of these counts.

Both appeals were argued on the ground that the convictions for the stealing of the two watches should not be sustained, as there was no evidence on which the Judge could find that either of the appellants had the intention of stealing the watches. The fact that they later pledged the watch to cover expenses created as stated earlier, could not—it was submitted—support the conviction.

As we have already said, we find no merit whatsoever in either of these appeals. In the circumstances, as established by the evidence, it was certainly open to the trial Judge to find the intent necessary to justify the conviction on the first count for the stealing of the watches. To disturb such conviction, the appellants must satisfy this Court that the conclusions of the trial Judge on which the conviction is based are not justified on the evidence. This, both appellants have failed to do ; and the appeals must fail.

What gave us some difficulty, was whether we should allow the sentences to run from today or make directions under section 147 of the Criminal Procedure Law (Cap. 155) that the sentences should run from the date of conviction. Considering that the appellants took their respective appeal without any legal assistance ; and especially considering that the sentences may be described as rather on the severe side in the circumstances, we have come, not without difficulty, to the decision to make directions for the sentences to run from the date of conviction.

In the result, both appeals are dismissed with directions that in each case the sentence imposed by the trial Court, shall run from the date of conviction.

Appeals dismissed ; sentence to run from the date of conviction.