

GEORGE APEYITOS.

Appellant,

v.

GEORGE
APEYITOS
v.
THE POLICE

THE POLICE,

Respondents.

(*Criminal Appeal No. 3028*)

Criminal Procedure—Trial in criminal cases—Trial and conviction in the absence of the accused—Bona fide misunderstanding as to the date of trial—Criminal Procedure Law, Cap. 155, section 89 (1)—Appeal—New trial ordered by the Court of Appeal exercising its powers under the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) section 25 (3) and the Criminal Procedure Law, Cap. 155, section 145 (d).

Trial in criminal cases—See above.

New Trial—Power of Court of Appeal to order a new trial—See above under Criminal Procedure.

This is an appeal against conviction by default of appearance in a case arising from the failure of the appellant to renew his radio-licence as required by the relevant statutory regulation. In the circumstances of this case, which are fully set out in the judgment of the Court, the appeal was allowed and a new trial was ordered under the powers vested in the Court of Appeal by the Courts of Justice Law, 1960 (*supra*), section 25 (3) and the Criminal Procedure Law, Cap. 155, section 145 (d).

Appeal allowed. New trial ordered.

Appeal against conviction.

Appeal against conviction by George Apeyitos who was convicted on the 14th August, 1968 at the District Court of Nicosia (Criminal Case No. 16731/68) on one count of the offence of maintaining an apparatus for wireless telegraphy without a licence from the Council of Ministers, contrary to sections 3 (1) and 11 (a) (ii) of the Wireless

Telegraphy Law, Cap. 307 and regulation 5 of the Wireless Telegraphy Regulations 1955 to 1966 and was sentenced by Mavrommatis, D.J., to pay a fine of £6.

G. Ladas, for the appellant.

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

The judgment of the Court was delivered by :

VASSILIADES, P. : This is an appeal against a conviction by default of appearance in a case arising from the failure of the appellant to renew his radio-licence as required by the relevant statutory regulation.

It is now abundantly clear that the appellant disputed, long before prosecution, liability to pay for his radio-licence the whole amount of fees claimed by the appropriate statutory authority (to cover also alleged arrears) maintaining that he was entitled to a licence for the current year, in respect of the set in his possession ; and disputing the alleged arrears. There was correspondence between the appellant and the authority (the officer in charge of Nicosia Post Office) in the course of which the appellant had sent in a cheque for a licence as he considered himself liable under the law ; which cheque was returned to the appellant by the public officer concerned, on the ground that it was insufficient for the licence required for appellant's radio-set. In consequence of this dispute as to the amount payable for his radio-licence, the appellant was prosecuted by the police, at the instance of the public authority for failure to renew his radio-licence ; and was convicted by default of appearance in the proceedings now before us.

As one would expect, the appellant instructed, in due course, a lawyer to handle his case. It is not in dispute that his advocate attended Court on the day on which the summons were returnable. It is not, however, quite clear what happened at the Court on that day ; excepting for the fact that the advocate was in Court for some time, but not when the case was called ; and that he made a note on his brief that the case had been adjourned to the 20th August.

We are now informed by counsel for the prosecution that before the 20th August, and in fact during the period between the 24th July, when the case was first called, and the 14th August, when the appellant was convicted in

absentia, his advocate came into telephonic communication with the appropriate officer of the Post Office, regarding the case when the date of the next hearing was mentioned. The Post Office employee, who was also a witness in the case, alleges that he informed the advocate that the case was to be heard on the 14th August. The advocate maintains that according to his record the next hearing was on the 20th August ; and that is what he had in mind all along. In these circumstances the advocate did not attend on the 14th August. But the officer did attend as a witness on the 14th and gave evidence to the Court in this particular case, upon which (evidence) the appellant was convicted.

1968
Dec. 23
—
GEORGE
APEYITOS
v.
THE POLICE

According to the record, the witness did not inform the Judge either of the dispute as to the liability of the appellant ; or of what happened regarding the adjournment and his communication with the advocate in the meantime. The Judge heard the evidence of this witness in the absence of the appellant ; and determined the case on that evidence without knowing either that the appellant claimed that he was entitled to a licence for the sum which he had tendered by cheque, or that the appellant intended to defend the proceedings through an advocate.

We have no doubt in our mind that in such circumstances the conviction must be set aside ; and that the case must be heard afresh, under an order for retrial. We find it unnecessary to enter into the question who was to blame for the misunderstanding or what were the causes for it. There can be no doubt that we can order a new trial ; and we propose doing so under section 145 (d) of the Criminal Procedure Law (Cap. 155) and section 25 (3) of the Courts of Justice Law, 1960.

Appeal allowed, conviction set aside and a new trial ordered.

*Appeal allowed ; New trial
ordered.*