[VASSILIADES, P., TRIANTAFYLLIDES, LOIZOU, JJ.]

GEORGHIOS I. PERISTIANIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3115).

Evidence in criminal cases—Accomplice—Corroboration—No corroboration necessary (unless required by law for specific offences) when trial Court or Judge feel, after duly warning themselves according to law, that they can safely act on the accomplice's evidence and convict—Appeal against conviction dismissed.

Corroboration—Accomplice—Evidence of—See hereabove.

Sentence—Sentence of one year's imprisonment for unnatural offence contrary to section 171 (*b*) *of the Criminal Code, Cap.* 154—*Offence a social evil—Sentence rather on the lenient side—Appeal against sentence dismissed.*

Criminal law—Unnatural offence—The Criminal Code, Cap. 154 *section* 171(*b*)—*Conviction and sentence—This kind of offence a social evil ; a habit which tends to undermine morality and considered by the community as a moral and physical stigma—See, also, hereabove.*

Unnatural offence—Contrary to section 171(*b*) *of the Criminal Code—See hereabove.*

The appellant was convicted in the District Court of Famagusta of the sexual offence in section 171(*b*) of the Criminal Code, Cap. 154 ; and was sentenced to twelve months' imprisonment. He appeals both against conviction and sentence.

The main complaint against conviction is that the trial Judge acted on the evidence of the accomplice (the other male involved in the commission of the offence) which the Judge accepted in preference to that of the appellant, notwithstanding the absence of corroboration.

Dismissing the appeal the Court :

Held, (*I*). *Regarding the conviction :*

(1) No question of corroboration arises when the trial Court (or Judge) at the end of the trial assessing the credibility

of an accomplice-witness, feel in their judicial conscience, after duly warning themselves according to law, that they can safely act on his evidence in determining the crucial issue in the case (See *Zacharia* v. *The Republic*, 1962 C.L.R. 52).

(2) In the present case the trial Judge after warning himself against the danger of acting on the accomplice's evidence without corroboration found in a carefully considered judgment that he could safely act upon the accomplice's evidence and convict. In our opinion the verdict reached with all due care and consideration was certainly open to the trial court and we see no reason for disturbing it. (See *Lambides* v. *The Police* (1967) 2 C.L.R. 142 ; *Paspalli* v. *The Police* (1968) 2 C.L.R. 108.

Held, (*II*). *As regards sentence :*

(1) The offence of which the appellant stands convicted is punishable with imprisonment for five years. If one were to look for reasons for such severity of punishment, one would see more than one good reasons. The community in this country considers this kind of conduct a social evil ; a habit which tends to undermine morality (individual as well as public) and to affect detrimentally sober, desciplined and healthy life. Such practices are here considered as a moral and physical stigma. It is not for the Courts to say why ; but it is for the Courts to apply effectively the law intended to prevent the spreading of such practices. Especially where selfishness strikes with them the young.

(2) On the facts of the case before us the sentence imposed by the trial court may be rather on the lenient side. The appeal is dismissed ; the sentence to run according to law from the determination of this appeal.

Appeal dismissed.

Cases referred to :

Zacharia v. *The Republic*, 1962 C.L.R. 52 ;

Lambides v. *The Police* (1967) 2 C.L.R. 142 ;

Paspalli v. *The Police* (1968) 2 C.L.R. 108 ;

Djemal Ismael v. *The Republic* (reported in this Part at p. 86 *ante*) ;

Xirishis v. *The Republic* (reported in this Part at p. 125 *ante*) ;

Reg. v. *Harris* [1969] 1 W.L.R. 745.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios I. Peristianis who was convicted on the 29th July 1969, at the District Court of Famagusta (Criminal Case No. 2385/69) on one count of the offence of permitting a male person to have carnal knowledge of him against the order of nature contrary to section 171(*b*) of the Criminal Code Cap. 154 and was sentenced by Pikis, D.J. to one years' imprisonment.

A. Triantafyllides, J. Kaniklides, M. Yusuf, for the appellant.

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

The judgment of the Court was delivered by :

VASSILIADES, P. : The appellant was convicted on July 29, 1969, in the District Court of Famagusta, of the sexual offence in section 171(*b*) of the Criminal Code (Cap. 154) ; and was sentenced to 12 months' imprisonment. He appeals both against conviction and sentence.

The main complaint against conviction is that the trial Judge acted on the evidence of the accomplice (the other male involved in the commission of the offence) which the Judge accepted in preference to that of the appellant, notwithstanding the absence of corroboration ; it is submitted that on the totality of the evidence before the Court, the verdict is unreasonable and unsatisfactory. Against sentence, the appeal is taken on the ground that, on the circumstances, the sentence is manifestly excessive.

Perusal of the record presents this case as a serious ; painful ; and plain matter. Serious, because the punishment for the offence, reflecting the view of the legislature on such conduct (which in this country is considered a social evil) is five years imprisonment ; and also because of the serious consequences of the conviction on the appellant ; on the other person involved ; and on a number of persons directly connected with them. It is a painful case, because a man of the age of the appellant (58 years old) who has described himself from the witness-box as an author, an artist, and an industrialist, appears to be desperately trying to save his name from the stigma of such a conviction ; and to save himself from the hardships and the unpleasantness of a sentence of one year's impri-

sonment. And it is a plain case because the main issue turns within a very narrow compass. Most of the principal facts leading to the conviction constitute common ground. The dispute is practically confined to the very act constituting the offence ; and to some closely connected events regarding which the only direct evidence is that of the appellant and the other person involved. I shall refer to him as the " accomplice ".

The principal facts are briefly these : Some short time prior to the commission of the offence charged the appellant approached two young soldiers of about 19 years of age, outside the cafe known as " Bocaccio " in one of the main streets of Famagusta town, and offered them a drive in his private car. He was a stranger to them but the two soldiers accepted the offer. One of them was the accomplice. The appellant took them for a short drive in the outskirts of the town, turning the conversation on various social subjects on which the appellant wrote a book, he said ; presenting them in the end with a copy each. The drive ended at appellant's flat where they all had a meal ; after which the appellant drove the young soldiers to their camp outside the town. A next meeting was arranged.

Avoiding detail, I may directly say that according to the appellant there were about ten such meetings ; in three out of which, both young men participated. In the rest, appellant and the accomplice were alone. In one of these drives, the accomplice states that the appellant laid a hand on his private parts ; which the appellant denies.

The appellant is a well off person, with a residence and a business in Limassol ; he kept, however, at the material time a flat at Famagusta, in a block of flats known as " Serenissima ". The accomplice is a youth from Kelokedara village in the District of Paphos. The appellant stated that at one of their meetings, the accomplice told him that all his fortune was half a shilling ; and that the appellant then promised to give him £15.—to buy a transistor and a suit of clothes for the approaching Christmas. This was said to have happened on November 22, 1968 (the day before the offence) when the appellant gave the accomplice £5.—; and agreed, he said, to drive him to Limassol the following day.

In fact on November 23, the appellant drove the accomplice to Limassol. The two of them left Famagusta at about 10.30 a.m. arriving in Limassol at about noon. From

there at the accomplice's request, the appellant drove him to Polemidhia (one of the suburbs) where he dropped the accomplice, arranging to pick him up from the same place at 4.30 in the afternoon ; which at that time of the year is early evening. One cannot but note the unusual kindness of this man of 58 to his young friend of 19 ; remembering also that the appellant said that he gave to the accomplice £10 at Limassol. The latter's version is that he received the £10 later that day, at Famagusta.

On the way back another most unusual thing happened. The appellant says that the young man had the impudence to tell him that he had been with a woman that day and had injured himself in the act. To convince him of the fact—the appellant added—the accomplice showed to him (the appellant) his injured penis. The accomplice's version of this indecency is that on their way back from Limassol, the appellant suggested indulging in the conduct charged. The evidence does not disclose how much further the conversation went on this topic during that drive.

On arrival in Famagusta the appellant did not take the young soldier to his camp. He took him to his flat ; where the accomplice had a shower, appellant said. And where he gave to the accomplice an ointment for his injury ; and a light meal which the appellant cooked personally in the kitchen while the accomplice was having his shower. The version of the accomplice on the point is that the appellant, soon after their arrival to the flat, stripped himself completely naked and made the accomplice do the same. He then asked the accomplice to lie on the bed, on his back ; caused him to have an erection by handling his private parts and then by squatting on accomplice's penis, the appellant caused the commission of the offence charged. The appellant then used a piece of tissue-paper from a roll by the side of the bed ; and then accompanied the accomplice to the bathroom where the latter had a shower in his presence. The appellant then placed some ointment, the accomplice says, on his slightly injured penis ; and after a short meal, gave the accomplice two £5 notes and drove him to the shop of a friend where he dropped him and drove off. These are the two versions of what happened at appellant's flat that evening.

The police, apparently following appellant's movements in this connection, had kept watch for his return to the flat ; and timed the stay of the two persons inside. According to a policeman's evidence, the appellant and the accomplice returned at 6.13 ; went into the flat together ; and

remained there until 7.20, when they came out again together and drove in appellant's car to a cafe in the town where the appellant dropped the accomplice.

The police having followed them, approached the accomplice as soon as the appellant left and requested him to proceed with the police to the Station. There the accomplice made a statement and handed to the police the £5 notes which he had received from the appellant. Accompanied by the Police, the accomplice was then taken to Famagusta Hospital where, on the same evening, a medical officer found a recent abrasion on his penis.

At 8.20 that same evening, the Sergeant in charge of the case accompanied by another policeman and armed with a judicial warrant, went to appellant's flat. The appellant opened the door for them ; and on being informed of the purpose of their visit, let them in. Asked, after the usual caution, whether he had anything to say regarding the matter under investigation, the appellant told the Sergeant that he had nothing to say.

After taking a roll of tissue-paper found near the bed (the state of which he later described to Court from the witness-box) the Sergeant arrested the appellant and took him to the Station. Asked by the police whether he would agree to be subjected to a medical examination in connection with the alleged offence, the appellant declined his consent ; and was not examined.

Besides the evidence of the two principal parties to the offence, the trial Court heard the Medical Officer, the Sergeant, and two policemen called by the prosecution. On that evidence before him, the trial Judge treated the young man as an accomplice ; and after warning himself against the danger of acting on his evidence without corroboration, he found in a carefully considered judgment, that he could safely act on the accomplice's evidence.

> " Undoubtedly—(the Judge says in his judgment) an accomplice is a witness whose evidence may be influenced by his connection with the crime, and therefore dangerous to act on his testimony without corroboration. I have scrutinised the evidence before me, with the utmost care and have seen P.W.1 (the accomplice) and the accused testify before me. I find that I am prepared, having duly warned myself as to the danger of acting on the uncorroborated evidence of P.W.1, to act even in the absence of corroboration on the evidence of P.W.1 ".

As pointed out by the learned trial Judge, section 171 of the Cyprus Criminal Code (Cap. 154) under which the appellant was charged creates two parallel but separate offences ; and strictly speaking a technical question may arise as to the complicity of the main witness in this case in the offence for which the appellant was charged under section 171(*b*). But quite rightly, we think, the trial Judge avoided the difficulty in the instant case, by treating the witness as an accomplice ; which morally and in substance no doubt he is.

The complaint of the appellant, as presented by learned counsel on his behalf, is that while the witness was treated as an accomplice on whose evidence the Judge felt that he could act without corroboration, nevertheless the trial Judge in fact looked for corroboration and found it in the points specifically mentioned as such in his judgment. None of these, counsel submitted, amounts to corroboration in the legal sense of the term. But none-the-less they must have affected the Judge's mind as such, when he came to consider his verdict ; and therefore, the conviction of the appellant in such circumstances, is unsatisfactory and should not be sustained.

The complaint is partly correct. The trial Judge, after saying that having duly warned himself of the danger of acting on the evidence of the accomplice without corroboration and that he still felt that he could safely do so in this case, for the reasons stated in his judgment, he went on to deal with the nature of corroboration ; and to list facts and evidence which in his view, corroborated the evidence of the accomplice.

This was, no doubt, unnecessary in the circumstances. No question of corroboration arises when the trial Court (or Judge) at the end of the trial, assessing the credibility of an accomplice-witness whom they heard and saw in the witness-box, feel in their judicial conscience, after duly warning themselves according to law, that they can safely act on his evidence in determining the crucial issue in the case. (See *Zacharia* v. *The Republic*, 1962 C.L.R. 52). The whole evidence adduced by all concerned, is already before them ; and the Court have considered it in the light of comment and argument from all parties. If at that stage the Court felt that the accomplice's evidence on the crucial issue is true and substantially correct, no question of corroboration arises. Going into such matters,

tends to create the impression—as it did in this case—that the trial Court found it necessary to look for corroboration ; and raises incidental questions.

Here what the trial Judge listed as corroboration, was part of the evidence in the case ; and facts established by such evidence, including that of the appellant. The Judge was entitled—indeed he was bound—to look at all this material, which, no doubt, influenced his mind and affected his verdict. If the Judge looked at it also as corroboration of the accomplice's evidence, is neither here nor there, once he was prepared to act on it even without corroboration.

After hearing at this stage learned counsel for the appellant in his valiant effort to attack the verdict in the instant case, we found it unnecessary to call on counsel for the Republic. The verdict, reached with all due care and consideration, was certainly open to the trial Court ; and we see no reason for disturbing it. (See *Lambides* v. *The Police* (1967) 2 C.L.R. 142 ; *Paspalli* v. *The Police* (1968) 2 C.L.R. 108). The appeal against conviction must be dismissed.

As regards the appeal against sentence, the function of the Courts is to apply the law of the State as it comes to us from the legislature. The offence of which the appellant stands convicted, is punishable with imprisonment for five years. If one were to look for reasons for such severity of punishment, one would see more than one good reasons. The community in this country, the great majority of its people, consider this kind of conduct a social evil ; a habit which tends to undermine morality (individual as well as public) and to affect detrimentally sober, disciplined and healthy life. Such practices are here considered as a moral and physical stigma. It is not for the Courts to say why ; but it is for the Courts to apply effectively the law intended to prevent the spreading of such practices. Especially where selfishness strikes with them the young.

For an attempt with violence to commit the offence on a child under thirteen, this Court affirmed recently a conviction by the Assize Court of Limassol, followed by a sentence of three years imprisonment. (See *Djemal Ismael* v. *The Republic*, reported in this Part at p. 86 *ante*). And for committing the offence on a young boy, the Court affirmed a sentence of two years imprisonment imposed by the Assize Court of Nicosia on a youth of 17. (See

Xirishis v. *The Republic*, reported in this Part at p. 125 *ante*). As reference was made in the District Court by defending counsel, to recent legislation in England regarding such conduct, we may, perhaps usefully, refer to *Reg.* v. *Harris* (John)—[1969] 1 W.L.R. p. 745 where for buggery of a 14 year old boy the trial Court sentenced the accused to seven years' imprisonment ; and for indecent assault on the same boy in the same circumstances, five years, concurrent. On appeal, the Court setting aside the conviction for indecent assault as resting on the same set of facts, reduced the sentence on the other count to five years' imprisonment.

In connection with sentence, counsel for the appellant referred to medical grounds. The Court is always concerned with the health of a convict who will sooner or later be returned to the community after serving his sentence. We gave the opportunity to counsel to inform the Court after consultation with his client, whether the latter would be willing to submit himself to a general examination by the prison medical services for all his ailments, physical as well as psychological, and whether he would be prepared to co-operate for the appropriate treatment, while serving sentence ; in such case, we said, we would be inclined to adjourn the further hearing of the appeal until we had a medical report, in the light of which to consider the appeal against sentence. Counsel informed the Court that his instructions at this stage, were to abandon the appeal against sentence.

As we have already intimated, we take the view that on the facts of the case before us, the sentence imposed by the trial Court may be rather on the lenient side than the reverse. We see no reason for interfering with the sentence ; or for making any directions in the matter.

In the result, the appeal is dismissed ; the sentence to run according to law from determination of the appeal.

Appeal dismissed.