

1969  
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KYRIACOS  
ATHANASSIADES  
v.  
THE POLICE

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES, STAVRINIDES,  
LOIZOU, HADJIANASTASSIOU, JJ.]

KYRIACOS ATHANASSIADES,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 3101*).

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*Criminal Procedure—Appeal—Abandonment—Notice of abandonment—It can be given at any time prior to the opening of the hearing of the appeal—The Criminal Procedure Law, Cap. 155 section 142—Cf. The English Rule 23 (as amended by the Criminal Appeal Rules, 1960 rule 4 ; and recently by rule 10 of the Criminal Appeal Rules, 1968 English)—Cf. sections 145 and 147 of the Criminal Procedure Law, Cap. 155.*

*Appeal—Abandonment of a criminal appeal—See hereabove. Advocate—Duty of advocate for appellant in cases of abandonment of appeal.*

*Appeal—See hereabove.*

Cases referred to :

*Joseph Gibbon* [1946] 31 Cr. App. R. 143 ;

*De Courcy* [1964] 48 Cr. App. R. 323 ; [1964] 1 W.L.R. 1245 ;

*Leslie Arthur Moore*, 41 Cr. App. R. 179.

Notice of abandonment of this appeal was filed about 40 minutes before the usual sitting of the Court, in the circumstances explained by counsel for the appellant (see *post* in the ruling of the Court).

*Held*, (1). The view taken by the Courts in England is that there is right of abandonment of the appeal which may be exercised by the appellant at any time prior to the opening of the hearing of the appeal. After due consideration, we see no sufficient reason for departing from that position although it may result in inconvenience and may lead to abuses.

(2) We decided to adopt the same view and to hold that a notice of abandonment under section 142 of the Criminal Procedure Law, Cap. 155 can be given at any time prior to the opening of the hearing of the appeal.

(3) In the result this appeal shall be deemed to have been abandoned under section 142 (*supra*) (notice having been given and having been received by the Chief Registrar before the opening of the appeal) ; and shall stand dismissed.

*Appeal dismissed.*

*Per Curiam* : If this (the abandonment) has to be done at the last moment, we take the view that counsel will feel the obligation to attend the Court and explain the position. We take also the view that counsel should take the necessary steps to inform the Court as well as the other side of the intention to abandon the appeal at the earliest possible.

### **Appeal against conviction and sentence.**

Appeal against conviction and sentence by Kyriacos Athanassiades who was convicted on the 22nd May 1969, at the District Court of Nicosia on three counts of the offences of assault, public insult and disturbance, contrary to sections 242, 99 and 95 of the Criminal Code Cap. 154, respectively, and was sentenced by Vakis, D.J. to one month's imprisonment.

*G. Tornaritis*, for the appellant.

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

The following ruling was delivered by :

VASSILIADES, P. : The appellant, a young policeman, was jointly charged with another person, before the District Court of Nicosia, for assault under section 242 ; for public insult contrary to section 99 ; and for disturbance contrary to section 95 of the Criminal Code. He was convicted on the 22nd May, 1969, on all three counts ; and was sentenced to one month's imprisonment on the count for assault. Against this conviction and sentence the appellant lodged an appeal on May 28, 1969.

On June 21, the appellant was released from prison having served his sentence. About a fortnight later, on July 8, 1969, he filed further grounds of appeal going both against conviction and sentence. The appeal came on for hearing on October 3, 1969. On the day of the hearing at 9.20 a.m. *i.e.* about 40 minutes before the usual sitting of the Court a notice of abandonment under section 142 of the Criminal Procedure Law (Cap. 155) was handed

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in at the Registry and was received by the Chief Registrar. The Judges were informed of this development shortly before the sitting of the Court ; and so was the counsel appearing for the State. Neither the appellant nor his advocate were in Court ; and nobody appeared for them when the case was called.

In view of the provisions of section 142 read together with other provisions in this part of the Criminal Procedure Law (Cap. 155) particularly the provisions in section 145 and section 147, the Court considered it desirable that the question whether the abandonment of the appeal was properly pursued, should be further considered ; and adjourned the further hearing of the appeal for to-day directing that in the circumstances, the presence of the appellant was necessary and that if he required any legal assistance arrangements would be made by the Chief Registrar.

In fact shortly afterwards Mr. Tornaritis, who appeared for the appellant earlier in the proceedings, saw me in Chambers, to explain why he had taken that step at such late hour before the hearing of the appeal. His explanation appeared to be genuine and prompted by his sense of duty as an advocate ; on the other hand, as the appeal was pending he was asked to give his explanation to the Court at the hearing.

To-day Mr. Tornaritis explained that after perusing the full notes of the case he advised the appellant who lives in another District ; and expected to receive instructions from him as to the next step. These instructions were not received, he assured us, until very late the day before the hearing of the appeal ; and that gave him no time to give an earlier notice.

We accept this explanation of counsel as we have no doubt that he felt his duty to the Court, which was to give full consideration to the convenience of the Court and the convenience of the other side ; and that by reason of that professional obligation he should give the notice of abandonment the earliest possible. He blamed the delay entirely on the appellant and on the fact that he comes from a distant village in another District.

Be that as it may, this is only a side-point in the appeal. The main matter is how do the rights of the appellant stand after the notice of abandonment under the relevant provisions of the Criminal Procedure Law, Cap. 155. It

was submitted this morning on behalf of the appellant that section 142 gives him a right to take this step ; and that he was entitled to take it, if he so decided, in view of the consequences which might follow the full hearing of the appeal ; particularly the part of the appeal against sentence. It was submitted that an appellant is entitled to abandon his appeal under section 142 at any time before the appeal is called on the day of the hearing. Mr. Frangos appearing for the Republic on behalf of the Attorney-General, agreed with this view and actually supported it by his argument.

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This Court has to watch carefully all proceedings before it, not only in the interests of justice generally by maintaining proper practices at the bar, but also in the interest of all parties to the proceedings. We must confess that we expected to receive some more assistance from counsel on this point.

After hearing submissions from both sides, we had to consider the matter further in conference ; and we looked for assistance to other jurisdictions, particularly England where apparently the provisions in section 142 originate. In fact, having looked up the matter, we think that it is clear that section 142 introduced into our criminal procedure a similar English practice. The position in England may be found in a nutshell in paragraph 909 of Archbold's 36th Ed. at p. 323 under the heading "Abandonment of Appeal". The matter is governed by Rule 23 (as amended by the Criminal Appeal Rules, 1960, Rule 4 ; and recently by rule 10 of the Criminal Appeal Rules, 1968).

English cases are, as usual, very helpful in the matter. Two of them which we looked up in the interval, are well in point. The one is a 1946 case, *Joseph Gibbon*, reported in the Criminal Appeal Reports, vol. 31, at p. 143. There the Court of Criminal Appeal consisting of Chief Justice Goddard, Mr. Justice Oliver and Mr. Justice Croom-Johnson had to deal with a very similar situation. They held, upon the English rule, that an appellant has the right to abandon his appeal at any time until the hearing of the appeal actually begins. Another case in point, a more recent one, is *De Courcy*, reported in Criminal Appeal Reports, 1964, vol. 48, at p. 323. The case may be also found in 1 W.L.R. [1964] p. 1245. One could also usefully refer to the case of *Leslie Arthur Moore* in 41, Criminal Appeal Reports at p. 179.

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The view taken by the Courts in England was that there is right of abandonment which may be exercised by the appellant at any time prior to the opening of the hearing of the appeal. After due consideration, we see no sufficient reason for departing from that position although it may result in inconvenience and may lead to abuses. We decided to adopt the same view and to hold that a notice of abandonment under section 142 can be given at any time prior to the opening of the appeal.

If this has to be done at the last moment, we take it that counsel will feel the obligation to attend the Court and explain the position. We also take the view that counsel should take the necessary steps to inform the Court as well as the other side of the intention to abandon the appeal, at the earliest possible.

In the result, this appeal shall be deemed to have been abandoned under section 142 (notice having been given and having been received by the Chief Registrar before the opening of the appeal); and shall stand dismissed.

*Order accordingly.*