ARISTOTELIS CONSTANTINOU LOIZIAS *alias* ARISTOS, *Appellant*,

v.

THE REPUBLIC, *Respondent.*

(*Criminal Appeal No.* 3136).

Trial in Criminal Cases—Rape—Complainant's statement to the police inconsistent with her evidence in Court—Such statement to the police not disclosed by the prosecution—An irregularity amounting to a substantial miscarriage of justice—Criminal Procedure Law, Cap. 155 *section* 145(1)(*b*)*—Conviction quashed—New trial ordered—Section* 145(1)(*d*) *of the statute—The case of* Isaias *v.* The Police (1966) 2 *C.L.R.* 43, *distinguished.*

New trial—See hereabove.

Miscarriage of justice—See hereabove.

Witness—Statement to the police—Inconsistent with evidence given by the witness in Court—Duty of the prosecution to disclose such statement—See hereabove.

Prosecution—Duty of the prosecution to disclose statement to the police by a person, inconsistent with the sworn evidence given in Court by that person—See hereabove.

Cases referred to :

Isaias v. *The Police* (1966) 2 C.L.R. 43 *distinguished.*

The facts sufficiently appear in the judgment of the Court quashing the conviction and directing a new trial.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Aristotelis Constantinou Loizias *alias* Aristos who was convicted on the 30th October, 1969, at the Assize Court of Famagusta (Criminal Case No. 7164/69) on two counts of the offences of rape and abduction contrary to sections 144, 145 and 148, respectively, of the Criminal Code Cap. 154 and was

sentenced by Georghiou, P.D.C., Pikis, D.J., and Christoforides, Ag. D.J., to six years' imprisonment on the first count and to two years' imprisonment on the second count, the sentences to run concurrently.

L. N. Clerides with *K. Saveriades*, for the appellant.

S. Nicolaides, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P. : In view of the conclusion which we have reached we shall say as little as possible, regarding the facts and merits of the case, confining ourselves to the reasons which led us to our conclusion. We need not go, at this stage, into the facts of the case ; the history of the proceedings ; the findings of the trial Court ; or, the result of the trial.

At the opening of this appeal against conviction for the abduction and rape of a girl of 19 and a sentence of six years' imprisonment, we were told that a statement made to a police sergeant by the complainant about 8 days after the commission of the alleged offence *i.e.* on April 27, 1969, was not produced at the trial which took place about six months later. The defence only came to know of its existence, after the conviction ; and the statement having been produced before us at the request of the defence, shows that the nature of the complaint in the statement was different to the nature of her evidence at the trial.

Mr. Nicolaides, who appeared for the prosecution both at the trial and in the appeal, properly agreed that a statement of this importance should be put before the court even at this stage ; and very rightly and correctly conceded that the non-disclosure of the statement may amount to an irregularity going to the root of the trial. He explained that the existence of such a statement came to his knowledge well after the trial. Having taken the case for another counsel only very shortly before the trial, he looked at the notes of the evidence taken at the preliminary inquiry ; and did not peruse personally the police docket. Had he known of it he would consider it his duty, he said, to inform the court of the existence of such a statement.

On the other hand, this is the main ground upon which Mr. Clerides for the appellant, argued the case of his client

before us. He submitted that the statement, if correct, places the sworn evidence of the complainant on a different footing ; and if untrue or incorrect, it places her credibility in a different light.

There is no doubt that such an irregularity, even if accidental or unintentional is so material in a case of this nature, as to go to the root of the trial. Mr. Clerides referred us to *Isaias* v. *The Police* (1966) 2 C.L.R. 43 where irregularities at the trial, originating in the prosecution, were held to amount to a substantial miscarriage of justice within the provisions of section 145(1)(*b*) of the Criminal Procedure Law, Cap. 155, vitiating the conviction. In the *Isaias* case, the Court considered the question of retrial ; and in the special circumstances of that case, reached the conclusion that for the reasons stated in the judgment, a new trial was undesirable. With the same anxiety we considered the question of a new trial in the instant case. We considered it in the light of the forceful submission by learned counsel on behalf of the appellant as to the consequences and hardships of a new trial. The relevant circumstances are different to those in the *Isaias* case. After giving the matter anxious and careful consideration, we came to the conclusion that a new trial is necessary in the interest of justice, in this case.

We set aside the conviction on the ground of the irregularity in question ; and we order a new trial under section 145(1)(*d*) of the Criminal Procedure Law, Cap. 155. If there was need to make use of our powers under section 25(3) of the Courts of Justice Law (No. 14 of 1960) which are more wide, we would not hesitate to do so in the circumstances of this case.

The question of where and before what court the new trial should take place has also been considered. Unless there are sufficient reasons to the contrary, we would direct that a new trial should take place before the Assize Court of Nicosia. Means of communication today are such that this will not make much difference as far as the witnesses are concerned. The attendance of the appellant before a court in Nicosia may be more easily arranged ; and the case will be tried in an entirely new environment.

Mr. Clerides : I would like to say something only on the question of the accused being let out on bail.

VASSILIADES, P. : We have also considered that, Mr. Clerides, and we feel that in the interests of justice, including the appellant himself, we should direct that the

appellant should remain in custody pending the new trial. But at the same time we shall direct that the new trial shall be before a special assize court, as early as it may be arranged. The matter will be dealt with under the relevant statutory provisions for a special assize to be constituted for the purpose. It is a very serious case, with very serious consequences on the appellant, on the complainant, on the investigating authorities, and, generally, on the community as a whole ; and we feel that in the circumstances justice must be expedited.

In the meantime, we would like to refer again to the observations made during the trial, regarding the cause which resulted in this very undesirable situation ; a situation where a trial of this nature and expense has to be taken afresh because of the failure of someone to appreciate his responsibilities in the administration of criminal justice. We leave the matter in the hands of the Attorney-General, who, we have no doubt, will deal with it accordingly.

Appeal allowed ; conviction set aside ; new trial ordered under section 145(1)(*d*) of Cap. 155, before a special Assize Court in Nicosia ; the appellant to be kept in custody in the meantime. Order accordingly.

Appeal allowed ; new trial ordered.