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PAUL FRANK
AYRES
v.
THE REPUBLIC

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

PAUL FRANK AYRES,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3218).

Homicide—Section 205 *of the Criminal Code, Cap.* 154*—Conviction—Appeal—Medical evidence—Cause of death—"Asphyxia due to strangulation", consistent with death occurring by inhibition—No sufficient material on record regarding certain vital questions—Doubt arising, in the light of the medical evidence, regarding the situation in which the pressure causing death was applied on the victim's throat—Medical evidence not excluding probability that the pressure may have been applied without the intent necessary to establish the offence of homicide—Up to the prosecution to establish beyond reasonable doubt the guilt of the Appellant—Appeal allowed—Conviction quashed.*

Homicide—Defence of accident—Evidence—Burden of proof—Intent—Medical evidence not excluding probability that the pressure on the victim's throat may have been applied without the intent necessary to establish the offence of homicide—See further supra.

Homicide—Intent necessary to establish the offence—Doubt left as to the intent with which pressure have been applied on the victim's throat—See further supra.

Trial in criminal cases—Burden and standard of proof in criminal cases (*see* Woolmington *v.* The D.P.P. [1935] *A.C.* 462; *and* Jayasena *v.* The Queen [1969] 2 *W.L.R.* 448, *P.C.*).

The Appellant was convicted by the Assize Court, in Famagusta, of the offence of homicide contrary to section 205 of the Criminal Code Cap. 154 (as amended). The particulars of the charge were that he, between the 27th and 28th May, 1970, at Famagusta, caused by strangulation the death of Carol Ann Mazeo. The Appellant was sentenced to

fifteen years' imprisonment; his defence was, *inter alia*, accident.

It is against this conviction that the Appellant took the present appeal. The facts of the case sufficiently appear in the judgments delivered (*post*), the Court unanimously allowing the appeal and quashing the conviction, holding that the medical evidence did not exclude probabilities leaving reasonable doubts as to the cause of death as well as to the intent required in law to establish the offence of homicide; and that, therefore, it was unsafe to convict the Appellant.

Cases referred to:

Meitanis v. *The Republic* (1967) 2 C.L.R. 31;

Tattari v. *The Republic* (1970) 2 C.L.R. 6;

Mancini v. *D.P.P.* [1942] A.C. 1;

R. v. *Turkington* [1931] 22 Cr. App. R. 91, at p. 92;

Woolmington v. *D.P.P.* [1935] A.C. 462;

Jayasena v. *The Queen* [1962] 2 W.L.R. 448, P.C.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Paul Frank Ayres who was convicted on the 14th November, 1970 at the Assize Court of Famagusta (Criminal Case No. 4550/70) on one count of the offence of homicide contrary to section 205 of the Criminal Code Cap. 154 and was sentenced by Georghiou, P.D.C., Pikis, and S. Demetriou, D.JJ. to fifteen years' imprisonment.

G. Cacoyiannis, for the Appellant.

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

VASSILIADES, P.: We think we can dispose of the appeal at this stage; Mr. Justice Triantafyllides will deliver the first judgment.

TRIANTAFYLLIDES, J.: The Appellant in this case has been convicted by an Assize Court in Famagusta, on the 14th November, 1970, of the offence of homicide, under section

205 of the Criminal Code, Cap. 154; the particulars of the relevant count being that the Appellant between the 27th and 28th May, 1970, at Famagusta, caused by strangulation the death of Carol Ann Mazeo, then of Famagusta. The Appellant was sentenced to imprisonment for fifteen years.

In the exercise of the powers of this Court to regulate the proceedings before it, it was decided to hear, first, both counsel on one of the several grounds of appeal, viz. that the trial Court "misdirected itself on the law and the facts and the burden of proof on the issues of intent and accident"; in the light of the arguments advanced in relation to such ground it appears unnecessary to hear either counsel on the other grounds of appeal, because the appeal can be disposed of at this stage by being allowed on the basis of the ground already argued.

The salient facts of this case are as follows:-

The deceased was residing at a house in Famagusta, in which there was living, also, a friend of hers, John Goulart; the Appellant was a friend of both the deceased and Goulart.

In the afternoon of the 28th May, 1970, Goulart returned from a trip abroad and found the deceased lying dead in the bathroom of the house. He summoned immediately the police, who arrived soon afterwards, at about 3.30 p.m.

The Appellant had been at the house from early in the morning of the 27th May, 1970, until, according to his evidence (which was not accepted by the trial Court), about 10–10.30 in the night of that day, and, according to other evidence (which was accepted by the trial Court), until the early hours of the 28th May, 1970.

According to the findings of the post-mortem examination, which was carried out on the 29th May, 1970, at 11 a.m. the death of the deceased may have occurred between eighteen and forty-eight hours before the post-mortem.

Dr. A. Kyamides, who carried out the post-mortem, stated, initially, in evidence that the cause of death was "asphyxia due to manual strangulation". He, also, described a number of injuries which were found on the body of the deceased, one of them being a 2½ cm. long, and deep to the bone, laceration on the posterior aspect of the vertex of the scalp;

below the laceration there was found a localized subdural haemorrhage. The laceration and the haemorrhage were attributed to forcible contact with a blunt hard instrument; when Dr. Kyamides was asked whether they could have been caused by a blow with a bottle he replied in the affirmative; and he stated, too, that after the blow the deceased must have lost consciousness for a length of time which could not be estimated and that such blow must have preceded her death by strangulation.

While being cross-examined, very ably and thoroughly, by counsel for the Appellant, the doctor said that during the post-mortem he did not find on the body any signs of death due to asphyxia; and he added: "I state that the death was due to asphyxia from strangulation but there were no signs of asphyxia and I give the death as due to asphyxia because strangulation is an asphyxial death". When counsel for the Appellant asked him whether the only case of death by strangulation where asphyxial signs may not be pronounced is that in which the death occurs by inhibition—i.e. by a rapid circulatory collapse, sometimes called vagal inhibition, due to pressure on the carotid nerve plexus—the doctor agreed with this proposition; and he stated that such inhibition occurs very suddenly and that is why the usual asphyxial signs are not evident, as due to mere pressure on the nerve concerned death occurs almost instantaneously; he added that even slight pressure can cause death by inhibition and that he could not exclude in this present case the possibility that the death of the deceased might be due to accidental application of pressure in the relevant area of her throat; he explained, in this connection, that the pressure applied to the throat of the deceased could not have been very great because there were found on her throat only abrasions, and not bruises which would have been found if great pressure had been applied; and he demonstrated in Court how he thought that the pressure had been applied: With only the right hand, not with both hands.

Regarding the point of time when, in relation to the blow on the head of the deceased which made her unconscious for a while, pressure was applied to her throat, the doctor stated that he could not say whether the pressure was applied before or after she regained consciousness, but that, in any case, she was alive when this was done.

In concluding his evidence Dr. Kyamides, reiterated, very fairly indeed, that in relation to the application of pressure on the throat of the deceased—in the way in which he had described—he could not exclude the possibility that it was a mere chance.

The next witness to whose evidence it is necessary to refer is Police Inspector Antonis Elia, the investigating officer; he stated that there were no signs of blood in the bathroom where the dody of the deceased was found; but blood was found in the kitchen.

As, according to the medical evidence, the wound on the head of the deceased must have bleeded as soon as it was inflicted, I do agree with the conclusion of the trial Court that the event which resulted in such wound must have taken place in the kitchen.

Inspector Elia testified that in the kitchen he had found human hair affixed, with some sticky substance, on various parts of a refrigerator and at points on the wall near and behind the refrigerator. On a table in the kitchen there were two wet towels, one of which was folded like a bandage; on one of the towels there were found traces of blood and in a waste-paper basket he found pieces of a broken bottle as well as a piece of tissue-paper stained with blood. On a table in the kitchen there were two glasses bearing the finger-prints of the Appellant and the deceased; finger-prints were traced, also, on the pieces of broken bottle in the basket but they could not be identified. On the floor of the kitchen he found a pool of blood which seemed to have been mixed with water and nearby there were stains of blood which appeared, too, to have been mixed with water; also, scattered about on the floor were several pieces of the broken bottle and splinters of glass.

Inspector Elia stated, further, that when he touched the hair of the deceased he noticed the existence on it of a sticky liquid; and from an area on the right side of the head the hair was missing; it appeared that it had been removed by something sharp like a razor.

In the main bedroom he found two envelopes placed next to each other and on them there was written the following note:

" DEAR JOHN—(it and may be reasonably inferred that " JOHN" was the deceased's friend John Goulart)—" I DID NOT WANT TO DO IT BUT SHE WOULD NOT LET GO AND THEY ARE GOING TO LOCK ME UP FOR EVER BUT I WONT LET THEM SEE YOU IN HELL". The trial Court accepted that the note on the envelopes was written in the handwriting of the Appellant. In the bedroom there were found, also, in a waste-paper basket, four pieces of tissue-paper which were stained with blood.

There does not exist on the record before us sufficient material which could make it possible to deduce, with any degree of certainty, what exactly took place during the many hours when the deceased was with the Appellant in the house; and so there are left unanswered some vital questions: For example, is the sticky substance with which hair was affixed at various places in the kitchen—even on the wall behind the refrigerator—related to the contents of the broken bottle? Is such substance the same as the sticky liquid noticed on the head of the deceased by Inspector Elia? Is the hair in the kitchen part of her hair? Was the wound on her head caused by a blow with the said bottle and how long before her death, and in what circumstances, was this wound inflicted? Without knowing definitely the answers to questions such as these it is impossible to form any safe view as to whether or not the events which led to the deceased being wounded on her head are related in a material way to, and can help to throw light on, the circumstances in which she subsequently died.

There remains, next, the doubt, which inevitably arises, in the light of the already quoted medical evidence, regarding the situation in which the pressure which caused her death was applied on the throat of the deceased: It is not known what happened and the medical evidence does not exclude the probability that the pressure may have been applied without the intent necessary to establish the offence of homicide, of which the Appellant was convicted.

In this case, as in every criminal case, it was up to the prosecution to establish the guilt of the Appellant; he did not have to establish his innocence; and in the light of all the foregoing I am of the view that it was not safe to convict the Appellant. His appeal has, therefore, to be allowed.

VASSILIADES, P.: The Court is unanimous in arriving at this result. We have reached it after most anxious

consideration in view of the nature of the case, of the defence put forward at the trial (a strongly contested and long trial, where 30 witnesses for the prosecution were heard and three witnesses for the defence, in addition to the evidence of the Appellant) and in view of the careful and well considered judgment of the trial Court.

The facts which led to the conviction of the Appellant—the conviction challenged by the present appeal—may be summarised as follows: In the early hours of the afternoon of May 28, 1970, Carol Ann Mazeo, a young woman in her early twenties, was found dead in the bathroom of the flat in which she was living at Famagusta, with a man, John Goulart (one of the prosecution witnesses) on his return from a short trip abroad, on which he was away for a couple of days. The Police were called in immediately; and an Investigating Officer took charge of the case. After some preliminary investigation, the body of the victim was removed to the hospital mortuary; and a post mortem examination was carried out by a medical officer on the following day, after the body had been in cold storage for many hours.

Suspicion fell on the Appellant, a young man 23 years of age, whom the Police could not find for the next two days. He was arrested on the 30th May. Informed of the charge against him, the Appellant admitted being with the victim for practically the whole day of May 27; but alleged that she was alive at the flat when he left her on friendly terms at about 10.30 in the evening. He then gave an account of his movements which the police found very unconvicing; and on the nature of which, the case for the prosecution partly rested.

The Appellant was eventually charged with the premeditated murder of the victim, under section 203 of the Criminal Code. The findings at the post mortem examination, were mainly an injury on the top of the head, which could have been caused by a blow with a 7–Up bottle; and which could cause unconsciousness; but could not cause death. Also certain signs on the throat which led the medical witness who carried out the post mortem examination, to the conclusion that the cause of death was asphyxia by manual strangulation, i.e. suffocation; arresting breathing by squeezing the windpipe at the throat.

The case for the prosecution is that the victim died in the hands of the Appellant after extending to him friendship and

hospitality, in her house, between about 8.30 in the morning of May 27, and the time of her death, during the night of the 27th to the 28th May. It is the case for the prosecution that after inflicting on his victim the head injury, with a 7–Up bottle, the Appellant strangled her with his hands.

The defence was put on two legs. The first was the version of the Appellant that he left the victim quite well in her house at about 10.30 in the evening of the 27th, when she came to see him off at the door, in a friendly manner. His story was that he had nothing to do with her injuries; or her death. But the defence also raised at the trial the issue whether the victim's death—whoever her assailant may have been—could be the result of unintentional action, or even accidental gesticulations.

The trial Court dealt with both these matters; and came to the conclusion that the victim died in the hands of the Appellant, as a result of pressure exercised on her throat with intent to kill, which (pressure) caused what the medical witness eventually described as "vagal inhibition"; or, in plain language, a reflex result of pressure on a nerve by the carotid sinus in the throat, causing "cardiac inhibition". The trial Court came to the conclusion that this pressure on the throat was exercised soon after the injury on the head, which had caused unconsciousness; but the Court could not find on the evidence, the time interval between the injury on the head and the pressure on the throat.

On these findings the trial Court convicted the Appellant on the second count in the information—homicide by unlawful act contrary to section 205 of the Criminal Code—and sentenced him to 15 years' imprisonment. I mention the sentence because it reflects the view which the trial Court took of Appellant's conduct. These (conviction and sentence) were challenged by the appeal before us, on a very carefully and ably prepared notice of appeal, where the case for the Appellant is fully set out. One of the grounds of the appeal was a complaint that the trial Court did not duly consider, by failing to attach sufficient importance to it, the defence of accident. In fact, the trial Court in their judgment rejected the suggestion of accident as "bordering the imaginable".

We have heard the appeal on this ground; and as it appeared to us that it might dispose of the whole case, we

heard both sides fully on this issue, before dealing with the other grounds of appeal. We have, therefore, approached this issue on the assumption that the person who caused the injuries found on the victim which led to her death, was the Appellant. Although this is an assumption, contested by the other grounds of appeal, I take the view that the findings of the trial Court regarding the version of the Appellant, appear to be well justified on the evidence.

This appeal is decided on the uncertainty resulting from the medical evidence in the case, which was not, in our opinion, given due consideration by the trial Court in making their findings as to the cause of death; and as to the circumstances which led to it. The medical witness who carried out the post mortem examination—on whose findings the case for the prosecution was prepared and presented to the Court—in giving evidence at the trial, stated (after referring to the injuries which he found on the body, both externally and internally) that the cause of death was " asphyxia due to manual strangulation."

This part of the doctor's evidence was strongly challenged by counsel for the Appellant with the result that in the course of the long, careful and exacting cross-examination, the doctor stated in answer to question —

Q. " But you agree that death could be accidental from that pressure that is to say by a pressure which is not meant to cause injury. By accidental, I mean, pressure, applied without intention to cause injury.

A. I cannot exclude this possibility in this particular case".

Further down in his evidence (three pages later in the transcript notes) the same medical witness stated that the cause of death was unknown. The questions and answers which led to this statement are:

Q. " The only evidence you had for coming to the conclusion that death was due to asphyxia due to manual strangulation, is the evidence really of these marks on the throat, nothing else.

A. Yes, that is so.

Q. If we were to ignore these marks, then all the signs

before you showed a death due to some kind of cardiac failure.

A. Unknown death.

Q. These marks by themselves, could not indicate whether they were fatal in themselves or not. They were certainly not fatal.

A. They showed that the carotid sinus was pressed and that pressure caused reflex cardiac inhibition."

In view of this witness' evidence, we have come to the conclusion that the findings of the trial Court upon which the conviction was based, are unsatisfactory; and should not be sustained. (*Meitanis* v. *The Republic* (1967) 2 C.L.R. 31 at p. 41; *Tattari* v. *The Republic* (1970) 2 C.L.R. 6). The conviction based on those findings, therefore, loses its foundation.

Learned counsel for the prosecution ably argued the legal aspect of the defence of accident. Adopting the generally accepted proposition in our legal system, that the burden of proof in a case like this, lies throughout on the prosecution, learned counsel contended that the defence of accident, when raised by the defendant, must find support in the evidence. I do not think that we can do better in this connection than refer to the case of *Jayasena* v. *The Queen* [1969] 2 W.L.R. 448 (Part 9), where the Privy Council dealt with the defence of accident and self-defence on appeal from the Supreme Court of Ceylon, with the help of eminent counsel and a Board of very experienced Judges in our times, if I may say so with all respect. I find it unnecessary to refer to any specific part of the judgment; it is not a long judgment; and I would urge anybody dealing with these matters to read it throughout. The case was decided on the legislative provisions in the Penal Code and in the Evidence Ordinance in force in Ceylon; but in comparing the position with that under English law and discussing the effect of *Woolmington* case on the latter (*Woolmington* v. *The Director of Public Prosecutions* [1935] A.C. 462) the decision in the *Jayasena* appeal is all the more helpful. When the defence of provocation, self-defence, accident or other such relevant matters to the crime under consideration, are raised at the trial on behalf of the defendant, the trial Court must fully consider them; carefully and persistently preserving an open mind in the matter until the

end of the day, as it is at that stage and upon the evidence considered as a whole, in the light of the final submissions made by both sides, that the Court must reach their verdict. It is at that stage of the trial, and in that frame of mind, that the Court must put to themselves the question whether they are satisfied in their own mind and conscience that every ingredient of the offence charged, stands proved to their full satisfaction, free of any shade of doubt arising from realities, probabilities or reasonable possibilities, even when these appear to be rather remote. This is easier said than done. But the trial Court's duty is not easy; and it is part of the appellate Court's responsibility to see that such difficult duty is properly discharged.

Having said that, I think that I can now conclude by stating that there exists a shade of suspicion on the Appellant that he is the person directly connected with the circumstances which led to the victim's death in this case.

HADJIANASTASSIOU, J.: On November 14, 1970, the Assize Court of Famagusta, after a long trial lasting for several days, and after properly addressing their minds in the light of the authorities before them that, *mens rea* was an essential ingredient of the crime of homicide, reached the conclusion that the accused was guilty of homicide, contrary to the provisions of section 205 of the Criminal Code, Cap. 154 and was sentenced to 15 years' imprisonment.

The general effect of the summing up was that a verdict of guilty could be returned as follows:-

> " These authorities consistently stress that the presence of *mens rea* is an essential ingredient of the crime of homicide, and where death ensues because of the unlawful act of the culprit in circumstances where he must have recognized that some harm to the victim was inevitable and death ensued therefrom, a verdict of guilty of homicide is justified. Likewise, where one acts utterly disregarding the probable consequences of his acts on others, in circumstances where harm to another should be foreseen, and death results therefrom, the culprit will equally be guilty of an offence contrary to s.205 of the Code."

The accused appealed against conviction on several grounds, but point 3 only was pressed by counsel for the accused. Ground 3 is in these terms:-

"The Court misdirected itself on the law and the facts, and the burden of proof on the issues of intent and accident.

In particular, the Court:

(a) Failed to appreciate fully the medical evidence in the case;

.....

(g) Failed to give sufficient consideration to the possibility of the death being accidental, viewing the absence of asphyxial signs, the presence of scratches instead of bruises on the neck, the fact that death came about from vagal inhibition and not respiratory arrest, and the amount of pressure necessary to produce such inhibition.

(h) Failed to consider possibilities consistent with innocence open to the Court from the evidence before it."

I am also of the opinion that the judgment of the trial Court ought to be reversed, but I propose elaborating the arguments and considerations which led me to this result.

The Appellant, Paul Frank Ayres, was 23 years old, and before he changed his address in Famagusta, resided for some time at 38B, Timarchou Street. He became acquainted with John Henry Goulart who occupied the next door flat of the same house. On May 9, 1970, Mr. Goulart introduced the Appellant to Miss Carol Mazeo during an accidental meeting at Nicosia airport when she was coming from England to Cyprus. A few days later on, the Appellant visited the house of Mr. Goulart with whom Miss Mazeo was co-habiting, and asked their permission to wash himself and have his shirts laundered. On the following day, May 25, the Appellant visited again the said house in order to collect his shirts, and stayed to lunch with them. The Appellant, during lunch, got to know that Mr. Goulart intended to make a trip to Athens. In fact, Mr. Goulart flew to Athens on the following day and returned to Famagusta shortly after 3 o'clock in the afternoon on May 28, to find Miss Mazeo, the girl with whom he co-habited, lying dead in the bathroom of their house. When he entered his house, he was seen by a neighbour, Marika Anastassi, and he came out of the house within 4–5 minutes;

he requested her to call the police. The police arrived at a commendable speed and met Mr. Goulart who was waiting for their arrival outside the house.

Inspector Elias started the investigation at the scene of the crime. In the hall of the house and opposite the door, he noticed two blood stains. He then entered the kitchen, and at the entrance of the kitchen there was a refrigerator, on the top of which there was human hair which was stuck on it. Behind the refrigerator and on the wall he also found human hair stuck on it with some sticky substance. He also found human hair stuck on the side and on the rear part of the refrigerator, backing on the wall and on the part of the wall behind the refrigerator. Near the table there was on the left side a waste paper basket in which there were pieces of broken bottle of 7–UP. On the kitchen floor there were several pieces of a broken 7–UP bottle. These were in addition to the pieces he saw in the basket. Splintered glass was scattered in the centre of the kitchen, in the corners, and all over the place. In the bathroom he saw the victim lying on her back on the floor. She was identified by Mr. Goulart who was present at the scene. She was fully dressed, but she had no shoes and was lying on her back and her head was lying on the left edge of the bath-tub wall. He noticed that there were bruises round her neck; her hair was sticky and there was also a sticky liquid on her hair. He also noticed an injury on the vertex of the skull of the deceased. On the right side of her head hair was missing as if it had been removed by a razor. In the bedroom he noticed on the right pillow of the bed two envelopes, containing the following note in capital letters:–

> " DEAR JOHN, I DID NOT WANT TO DO IT, BUT SHE WOULD NOT LET GO, AND THEY ARE GOING TO LOCK ME UP FOR EVER BUT I WON'T LET THEM SEE YOU IN HELL".

The trial Court made a finding that the note I have just read was written in the hand-writing of the Appellant. Moreover, in the waste paper basket in the bedroom, the witness noticed four kleenex tissues with bloodstains on them. Questioned by the trial Court, the witness replied that there were no bloodstains on the floor of the bedroom, adding that he formed the impression that in the kitchen an attempt had been made to mop the floor recently. He went on to say that at the spot where the deceased was found in the bathroom there was no blood on the floor anywhere.

Doctor Chrysostomou, a medical officer at Famagusta hospital, was also summoned to the scene, and after an examination, he confirmed that Miss Mazeo was dead. Regarding the position of the deceased in which she was found, in the opinion of the doctor, it could not have been the result of a fall on the ground. He further explained that the distance between the toes of the victim and the wall of the bath-tub was so small that had the deceased suffered a slip or accidental fall backwards, her shoulders would have had first hit the wall of the bath-tub and then fall to the ground. Moreover, he said that there was no trace of injury on her shoulders or anywhere at the back of the deceased.

The body of the deceased was removed to Famagusta hospital mortuary and was placed in a refrigerator, and on the following day, May 29, at 11.00 a.m., Dr. Kyamides carried out a post-mortem examination. He described both the external and internal injuries of the deceased and came to the conclusion that the cause of death was "asphyxia due to manual strangulation". Although he could not indicate with exactitude the precise time of death, the doctor stated that the death of the deceased came about 18-30 hours earlier, and probably 40-50 hours.

In the meantime, the Appellant who according to his own story had intimate relations with Miss Mazeo in London, on the morning of May 27, went to pay her a visit. He knocked at the door repeatedly and when there was no reply, he had a conversation with Mr. Savvides, a barber whose shop was very close to the house of the deceased. He returned shortly afterwards, and when he knocked at the door, Miss Mazeo opened it and they stayed talking at the entrance of the house. Then the Appellant went to his car, took out a nylon bag containing some clothes, and entered into the house. He was seen leaving the house shortly afterwards carrying an empty milk bottle. At 3.30 in the afternoon, the car of the Appellant was seen parked outside the house of Mr. Goulart and the barber saw the Appellant and Miss Mazeo talking on the verandah of the house. According to the Appellant's evidence, he left the house for only a short while for the purpose of getting some milk and bread. At about 8.30-9.00 o'clock both Messrs. Ioannis Charalambous and Yiangos Savvides heard conversation going on in the house between a man and a woman, and although they could not make out what was said, Mr. Savvides recognized the voice of the Appellant. The

prosecution proved that the Appellant was seen and recognized coming outside the house of Mr. Goulart at about 2.30 in the Morning of May 28. He was seen entering his car and leaving in a great hurry. The Appellant denied this, and maintained that he had left the house between 10.30 and 11.00 in the evening when he was seen off by Miss Mazeo, but the trial Court, however, accepted the evidence of the prosecution on this point, and rejected the story of the Appellant.

There is no doubt that the medical evidence in this particular case is the most important part of the case for the prosecution, particularly so, in view of the absence of any evidence as to what has happened between the Appellant and the deceased during the long hours they remained in the house in question. From the description of the injuries suffered by the deceased, it appears that there was a serious injury involving a deep laceration of the vertex of the head, due to forcible contact with a blunt object; injuries on the throat, and other injuries on the body. Dr. Kyamides explained in great detail how death came about. The cause of death, he said, was due to asphyxia due to manual strangulation. Dr. Kyamides was questioned by counsel for the Respondent on these lines:-

"(*Q*) Would you say that if she suffered a blow as a result of which she had a subdural haemorrhage you mentioned, that after such blow she would retain consciousness or would she lose consciousness?

(*A*) After a forcible blow on the head and the development of the localized subdural haemorrhage she could not remain sensible. She must have lost consciousness.

(*Q*) Would you say that the strangulation followed the blow on the head, or would you say that it preceded it?

(*A*) The blow preceded the strangulation.

(*Q*) On what do you base this opinion?

(*A*) Because of the bleeding and the intra-craneal haemorrhage, i.e. because of the extension of the intra-craneal haemorrhage which was due to the blow on the head."

Cross-examined by counsel for the Appellant:

"(*Q*) Death by strangulation is death by asphyxia?

(*A*) Yes.

(*Q*) In death, of the nature you have described there are two matters, one is the asphyxial death and the other is the cause of the asphyxia. Here you say it is death by asphyxia and the cause is manual strangulation.

(*A*) Strangulation is an asphyxial death.

(*Q*) It is an asphyxial death and then you have to go and find the cause of the asphyxia, and in this case you say the cause was manual strangulation?

(*A*) The term 'asphyxia' is general, when we say asphyxia it is a general term. We have to qualify whether it is asphyxia due to drowning, hanging, strangulation, etc. Asphyxia is the result of something else, and in this particular case it is the result of manual strangulation.

(*Q*) So first of all one has to establish medically whether the asphyxial signs are present, and then one has to find the evidence which would indicate how the asphyxia was caused.

(*A*) Yes, I agree.

(*Q*) Would you agree with me that the general signs of asphyxia are the following:- Colour, lividity is well developed, face is sinused, lips, fingers are bluish in colour?

(*A*) Yes, I agree.

(*Q*) You also agree with me that none of these signs were present?

(*A*) Yes, I have not given any description of asphyxial signs. In my evidence, I did not give any asphyxial signs. I state that the death was due to asphyxia from strangulation, but there were no signs of asphyxia, and I give the death as due to asphyxia, because strangulation is an asphyxial death. In the case of strangulation death, asphyxial signs need not be present. Asphyxial signs are not inevitable in strangulation death.

(*Q*) The only case of death, by strangulation where these signs may not be pronounced is where the death has occurred by inhibition, i.e. a rapid circulatory collapse (sometimes called vagal inhibition) which is due to pressure on the vagal nerve?

(*A*) Yes, pressure on the carotid plexus.

(*Q*) This inhibition is something which occurs very suddenly and that is why the usual aspyxial signs are not evident.

(*A*) Yes.

(*Q*) In other words, from a mere pressure on the nerve death occurs almost instantaneously and so there is no time for the asphyxial signs to manifest themselves.

(*A*) That is so.

(*Q*) And you will agree with me that slight pressure over the larynx or carotid sinus could cause death from inhibition.

(*A*) From cardial inhibition, Yes.

(*Q*) But you agree that death could be accidental from that pressure, i.e. by a pressure which is not meant to cause injury. By accident I mean the pressure applied without intention to cause injury.

(*A*) I cannot exclude this possibility in this particular case.

(*Q*) But for manual strangulation to cause asphyxia and death, one would expect pressure on the larynx.

(*A*) Of course pressure is exercised everywhere, but it is not evident always where pressure has been exercised.

(*Q*) Could you say whether the abrasions you found on the throat as you described them, whether they correspond to any particular fingers?

(*A*) Not to any particular fingers, but the injuries are likely to have been caused by finger-tips.

(*Q*) The only evidence you had for coming to the conclusion that death was due to asphyxia due to manual strangulation is the evidence really of these marks on the throat, nothing else.

(*A*) Yes, that is so.

(*Q*) If we were to ignore these marks, then all the signs before you showed a death due to some kind of cardiac failure.

(*A*) Unknown death.

(*Q*) These marks by themselves could not indicate whether they were fatal in themselves or not. They were certainly not fatal.

(*A*) The marks found or the injuries found because of the position.....

(*Q*) They showed manual manipulation. But they did not show that they caused the death.

(*A*) They showed that the carotid sinus was pressed and that pressure caused reflex cardial inhibition.

(*Q*) What is there to exclude the possibility that the death was not due to the blow on the back of the head.

(*A*) No, the blow was not fatal.

(*Q*) That blow could have been caused by an accidental fall?

(*A*) Yes, it could have been caused by a fall."

Re-examined by Mr. Georghiades:

"(*Q*) You made a demonstration to the Court as to the probable position of the assailant and the victim. Do you think that such a gesture could be made accidentally, by chance or only as a result of a deliberate intention?

(*A*) I cannot exclude the possibility that this was a mere chance, provided one is joking."

Pausing here for a moment, it is to be observed that regarding the pressure on the throat of the victim, Dr. Kyamides could not exclude the possibility that such a gesture was a mere chance.

The trial Court had this to say at p. 208;–

"..... we find that the deceased was first brutally assaulted on the head, suffering thereby a most serious injury leading to unconsciousness, and then strangled to death by pressure on the throat. We cannot from the evidence before us make any findings regarding the time interval that elapsed between the two acts, beyond saying that strangulation followed the head injury. Carol Ann Mazeo must have been badly incapacitated after the head injury, incapable of offering any resistance to her assailant, irrespective of her regaining consciousness or not by the time of strangulation."

Later on they said at p. 209:–

" We find as a fact from the evidence before us that when pressure was applied on the throat of the deceased, the assailant intended to kill her. We have no indication, however, as to the time at which he forms such an intent, and this cannot be discerned from his acts resulting in the death of the victim."

Counsel for the Appellant in his forceful argument, contended both before the trial Court and in this Court that the medical evidence is consistent with many theories including the cause of the accident. He further argued that when the defence of accident is raised, no evidential burden as such is cast on the defence beyond raising this issue.

The trial Court, dealing with the points raised, had this to say at p. 207:–

" It is probably a misnomer to refer to accident as a defence. *Mens rea* involves a subjective mental element. A man, however, is presumed to intend the natural and probable consequences of his acts; therefore, where a man engages himself in a course of conduct, the natural and probable consequence of which is a given result, he will always be allowed to say that he did not intend the foreseeable result and it will be a question of fact for the jury at the end of the day, bearing in mind the evidential burden cast on the prosecution to decide whether he did actually foresee the result that followed. A classic illustration is the case of *Woolmington* v. *D.P.P.* [1935] A.C. 462, where the prisoner maintained that he did not, despite his acts, foresee the consequences that followed. There is no evidence whatever to suggest that the assailant

of Carol Ann Mazeo did not intend the natural and probable consequences of his acts. The outward manifestations of violence in this case are consistent with one view only, that the assailant intended to cause the death of Carol Ann Mazeo or at least inflict upon her grievous bodily harm. In fact we have been invited by Mr. Cacoyiannis to consider this defence in circumstances bordering the imaginable. . We have been asked to visualise Carol Ann Mazeo falling accidentally to the ground and suffering serious head injuries. A by-stander actuated by feelings of benevolence, desiring to help, applies considerable pressure on the throat of Carol Ann Mazeo in an effort to help her recover consciousness. The application of such pressure on the throat is consistent with only one view, an intent to cause death."

With the utmost respect to the trial Court's view, I am inclined to take the opposite view, because after reviewing the medical evidence adduced on behalf of the prosecution, I have reached the conclusion that such evidence is not consistent with only one view, viz., to cause death, but on the contrary, the evidence gives some reasonable indication that the application of pressure on the throat of the victim was unintentional.

No doubt, so strong is the presumption of innocence that in order to rebut it, the crime must be brought home to a prisoner "beyond reasonable doubt", and the graver the crime the greater will be the degree of doubt, that is reasonable. This is the result of *Mancini* v. *D.P.P.* [1942] A.C. 1 explaining *Woolmington* relied upon by the trial Court.

If, therefore, the defence suggests an alternative theory which is possible and consistent with the evidence, the accused must be acquitted. See *Rex* v. *Turkington* [1931] 22 Cr. App. R. 91 at p. 92. Moreover, since intention is necessarily in issue in a murder case, when evidence of death and malice has been given, the accused is entitled to show by evidence or by examination the circumstances adduced by the prosecution, that the act on his part which caused death was either unintentional or provoked. It is hardly possible, therefore, when the defence of accident is raised, not to be given due weight by the trial Court whether the accused has given evidence on the subject or not. Because "if the jury are left in reasonable doubt whether the act was unintentional or

provoked, the person is entitled to be acquitted". Per Lord Sankey in the *Woolmington* case. Be that as it may, since there was no direct evidence which might contribute to the circumstances by throwing light upon the probable reasons for the death of the victim, I entertain serious doubts, for the same questions mentioned by my brother Triantafyllides, J., the answers of which could have helped this Court to decide whether the trial Court could with certainty, in the light of the evidence before us, have reached its conclusions that the Appellant intentionally killed the deceased.

For the reasons which I have endeavoured to explain, I am of the opinion that the trial Court misdirected itself regarding the medical evidence, and the burden of proof on the issues of intent and accident, and since it was not safe to convict the Appellant, I would allow the appeal and quash the conviction exercising my powers under section 145 of the the Criminal Procedure Law, Cap. 155.

VASSILIADES, P.: In the result this appeal is allowed and Appellant's conviction is set aside.

Appeal allowed.