[STAVRINIDES, HADJIANASTASSIOU, A. LOIZOU, JJ.]

PETROS THEODOROU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3278).

Indecent assault—Evidence—Indecent assault on a female (a girl of 14 *years of age) contrary to section* 151 *of the Criminal Code Cap.* 154*—Evidence of the complainant—Need as a matter of practice of corroborative evidence—But in a proper case conviction may rest on the sole evidence of the complainant—As in the present case—No question of mistaken identity because the accused is a person known to the girl—No suggestion of fabricated story—Nothing weak or unnatural in her evidence—Trial Judge properly warned himself as to the danger of acting on the uncorroborated evidence of the complainant—Trial Judge could safely act upon it—There being nothing to suggest that he was in any way influenced by any extraneous matter such as his knowledge of the previous convictions of the accused for similar offences.*

Evidence—Sexual offences—Indecent assault—Corroborative evidence required as a matter of practice—May be dispensed with in a proper case—See supra.

Evidence in criminal cases—Sexual offences—Corroboration—See supra.

Trial in criminal cases—Judge's knowledge of previous convictions and bad character of accused—No automatic disqualification—Cf. supra.

Trial in criminal cases—Article 30, *paragraph* 2, *of the Constitution—Right to a public hearing—Not absolute but subject to a great number of exceptions enumerated in that paragraph—The protection of juveniles one of them—In the instant case, in view of the tender age of complainant and the nature of the offence charged, the trial Judge was fully satisfied in ruling that the complainant's evidence should be given in camera—Judge's*

discretion properly exercised—Cf. European Convention on Human Rights, Article 6(1).

Public trial—Right to public hearing—Exceptions—See supra.

Constitutional Law—Right to public hearing—Article 30.2 *of the Constitution—Cf. Article* 6(1) *of European Convention on Human Rights—See* supra.

The Appellant was convicted by the District Court of Paphos on a charge of indecent assault on a female—a girl of fourteen years of age—contrary to section 151 of the Criminal Code Cap. 154. The evidence on which he was so convicted was that of the complainant without any corroborative evidence to support it. It is not in dispute that the trial Judge knew of Appellant's previous convictions for offences of the same nature.

It was argued by counsel on behalf of the Appellant that the conviction should be set aside inasmuch as the trial Judge was disqualified from trying the case because he knew of the Appellant's aforesaid previous convictions; and that, in any event, the evidence of the complainant on which he was so convicted was unnatural and weak, so that, in the absence of any other corroborative evidence, it might not have been accepted by the trial Judge had he not known of the previous convictions of the accused (Appellant). A point was also raised that the trial Court erroneously deprived the Appellant of his right under Article 30 of the Constitution of having his case tried in public, by ordering the proceedings to be taken in camera without asking the views of the defence on that issue.

Dismissing this appeal against conviction, the Supreme Court:–

Held, (1) (a). We take the view that a Judge may be trusted to hear with an open mind and adjudicate in a case with impartiality and fairness although he is aware of the prisoner's previous convictions or character.

(b) In taking that view we do not purport to be laying down a general principle that in no circumstances may a Judge be precluded from trying a case in view of such knowledge. All we say is that there is no automatic disqualification of a Judge (see *Rex* v. *Box and Box*, 47 Cr. App. R.284, at p. 287).

(c) Were we to accept that the mere fact that some time earlier a Judge had tried and convicted an accused person

on a similar offence is sufficient to disqualify him from dealing with a case, we would be ignoring the realities of a small island such as Cyprus, where judges administering criminal justice, with the passage of time, acquire considerable knowledge of people and their antecedents.

(2) (a) Turning now to the evidence and the findings of the trial Judge, we reached the conclusion that this case presents no such characteristics as might give rise to any doubt as to whether he (the trial Judge) was influenced by his knowledge of the previous character of the accused in believing the complainant and disbelieving him. The trial Judge gave the reasons why he accepted her evidence and discarded that of the accused; and he, further, duly directed his mind to the need, as a matter of practice, for corroboration of the evidence of the complainant in cases of indecent assault and other sexual offences, referring to the case of *Makris* v. *The Police,* 1961 C.L.R. 330.

(b) Having perused the record we have come to the conclusion that there was nothing weak or unnatural in the testimony of the complainant. There could be no question of mistaken identity as the accused was known to her, nor was there anything to suggest that she had fabricated her story.

(3) *Regarding the decision of the trial Judge on the application of the prosecution to hear the evidence of the complainant in camera:*

(A) The right to a public trial is safeguarded by Article 30, paragraph 2, of the Constitution. This right, however, is not an absolute one. By the express terms of that paragraph, it may be restricted in the interests of the security of the Republic, constitutional order, public order, public safety, public morals or where the interests of juveniles or the protection of private lives of the parties so require or in special circumstances where in the opinion of the Court publicity would prejudice the interests of justice.

(B) In the present case the nature of the complaint and the age of the complainant (14 years of age) fully justified the trial Judge in exercising his discretion as he did.

(C) The fact that nothing appears on the record to have been said by counsel for the defence for or against the application of the prosecution for the hearing in camera of

the complainant's evidence does not change the position as, in the first place the Court could so rule *ex proprio motu* and, in the second place, had the learned counsel really been minded to object for any reason to a trial in camera, he could have jumped to his feet and said so, this being a matter affecting the fandamental human rights of a prisoner.

(4) For all the above reasons, examining the case on the totality of the evidence we have not been able to find that there has been any miscarriage of justice justifying this Court in interfering with this conviction.

Appeal dismissed.

Cases referred to:

Rex v. *Box and Box*, 47 Cr. App. R. 284, at p. 287;

Makris v. *The Police*, 1961 C.L.R. 330;

Re William Oliver, 333 U.S. 257–286 per Justice Black;

John Syme [1914] 10 Cr. App. R.284, at p. 287;

Tumey v. *Ohio* (1926) U.S. 272–274, 71 Law. Ed. at p. 749;

Rex v. *Sussex Justices, McCarthy ex parte* [1924] 1 K.B. 256, at p. 259, per Lord Hewart C.J.;

Rex v. *Caernarvon Licensing Justices Ex Parte Benson* [1949] 113 J.P. 23, at p. 23;

B. v. *Attorney-General* [1965] 3 All E.R. 253, at p. 256;

Greenway v. *A.G.* [1927] 44 T.L.R. at p. 124;

Christou v. *Christou*, 1964 C.L.R. 336, at p. 346;

Spies v. *Illinois* U.S. 31 Law. Ed. 80;

Scott v. *Scott* [1913] A.C. 417.

Appeal against conviction.

Appeal against conviction by Petros Theodorou who was convicted on the 6th August, 1971 at the District Court of Paphos (Criminal Case No. 2238/71) on one count of the offence of indecent assault on a female contrary to sections 151 and 35 of the Criminal Code Cap. 154 and was sentenced by Boyadjis, D.J. to one year's imprisonment.

L. Clerides with *P. Kounnides*, for the Appellant.

Cl. Antoniades, Counsel of the Republic, for the Respondents.

STAVRINIDES, J.: The first judgment will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J.: In this case the Appellant appeals against his conviction on the 6th August, 1971, by the District Court of Paphos on a charge of indecent assault on a female, contrary to s. 151 of the Criminal Code, Cap. 154.

The complainant is a school-girl of 14 years of age and the Appellant, aged 60, a lorry-driver and farmer from Pakhna village. He was known by the complainant, having been seen by her on previous occasions when he sold straw to her brother at Messana village and also when he visited and had lunch at their house at Paphos. The incident of the indecent assault—which need not be described here—for which he has been convicted, took place outside her house at Paphos. The Appellant stopped his lorry and inquired about her brother. On being told by her that he was not at home, he asked the complainant to fetch a bucket of water for the filling up of the radiator of the lorry, which the complainant did. It was in the course of the radiator filling that the assault took place.

The several grounds of appeal may be grouped into three main ones:-

(a) That the conviction of the Appellant should be set aside inasmuch as the trial Judge who tried the case was disqualified from doing so, in spite of his high integrity, because he knew of Appellant's previous convictions for offences of the same nature, having tried the Appellant and found him guilty on the 20th October, 1969, at Limassol. Furthermore, the Appellant, on the very same day on which he was before the Court in this case, was also charged before the same Judge and pleaded not guilty, in another case with abduction of a female.

(b) That the finding of the trial Court was unreasonable in view of the fact that the story of the girl—the only evidence adduced by the prosecution without any other corroborative evidence—was unnatural and

weak and her testimony might not have been accepted by the Judge had he not known of the previous convictions and character of the accused.

(c) The Court erroneously deprived the Appellant of his right under Article 30 of the Constitution of having his case tried in public, by ordering the proceedings to be taken in camera without asking the views of the defence on such an important issue.

Counsel for the Appellant summed up his able argument as follows:- "The evidence of the complainant by itself was weak, unreasonable and unnatural. In the absence of any corroboration the trial Judge should not have acted upon it and in the particular circumstances of this case he chose to do so probably because he knew of the pending case against the Appellant and his previous conviction in another case which he himself had tried at Limassol. Since the possibility cannot be excluded by this Court that in believing the complainant and disbelieving the accused, the trial Judge was, or might have been, influenced by these two factors, the conviction should be quashed, the Appellant being given the benefit of the doubt."

We have been referred also to a number of authorities dealing mostly with the need for corroboration and the effect of irregularities on convictions, such irregularities emanating from wrong admission of evidence or improper cross-examination of accused persons as to their antecedents and character. One of them in particular is the case of *Rex* v. *Box and Box*, 47 Cr. App. R. p. 284, which is of direct significance to the present appeal. The Lord Chief Justice at p. 287 of the report had this to say:-

> "This Court knows of no case, and none has been referred to us, in which knowledge of a prisoner's previous convictions or character by a member of the jury has been held to be, as it were, an automatic disqualification, or to prevent him from hearkening to the evidence, observing the oath which he has taken and affording the prisoner a fair trial. There are no such cases, and this Court is quite satisfied that while it is unnecessary to lay down an absolutely general rule, so far as this case is concerned, there is no proof that the foreman was unable to do what he had sworn to do by his oath, and did not do so."

The aforesaid proposition, applicable as it is to the case of a juror—a layman—a fortiori, should be good law in the case of a Judge who, as in Cyprus, is performing also the functions of a juror. Such distinction is warranted because it should be assumed that Judges, with their training, experience and impartiality arrive at their verdict solely on the evidence before them. It is in very special circumstances that doubts may arise as to this. In the light of these considerations, I now turn to the evidence and the findings of the trial Judge to see, if really, the present case presents such characteristics as may give rise to any doubt as to whether the trial Judge was influenced by his knowledge of the previous character of the accused in believing the complainant and disbelieving him.

In a meticulous judgment, after expounding the facts and circumstances of the case, the trial Judge proceeded to give the reasons why he accepted her evidence and discarded that of the accused. He then dealt with the legal position and referred to the case of *Georghios Panayi Makris* v. *The Police*, 1961 C.L.R. 330, regarding the need, as a matter of practice, for corroboration of the evidence of the complainant in cases of indecent assault and other sexual offences. He said:-

> " I have further scrutinized the evidence of the complainant with special care in view of the fact that it is not corroborated. I have, nevertheless, decided to act upon this evidence and I exclude any danger in this case in view of the certainty in my mind that the girl has told the truth."

Having perused the record of the case, I have come to the conclusion that there was nothing weak or unnatural in the testimony of the complainant. The trial Judge could safely act upon it and there is nothing to suggest that he was infuenced by any extraneous matter when accepting the evidence of the complainant as being true. There could be no question of mistaken identity as the accused was known to her, nor was there anything to suggest that she had fabricated her story. The first two grounds of the appeal, therefore, cannot be upheld.

In taking the view that a Judge may be trusted to hear with an open mind and adjudicate in a case with impartiality and fairness although he is aware of the prisoner's previous convictions or character, I do not purport to be laying down a general principle that in no circumstances may a Judge be

precluded from trying a case in view of such knowledge. All I say is that there is no automatic disqualification of a Judge. Were I to accept that the mere fact that some time earlier a Judge had tried and convicted an accused person on a similar offence is sufficient to disqualify him from dealing with a case, I would be ignoring the realities of Cyprus. On account of the island's small size, Judges administering criminal justice, with the passage of time, naturally acquire considerable knowledge of people and their antecedents; indeed, it is not uncommon for two cases against the same accused to be pending simultaneously before the same Court. This knowledge is usually shared by the people at large, and it appears that it must have been one of the predominant factors that have not favoured the adoption so far of the jury system in Cyprus. In the light of the above, I have come to the conclusion that this ground must fail.

What remains to be considered is the decision of the Judge on the application of the prosecution to hear the evidence of the complainant in camera.

The right to a public trial is safeguarded by Article 30, paragraph 2, of our Constitution. This right, however, is not an absolute one. By the express term of that paragraph, it may be restricted in the interests of the security of the Republic, constitutional order, public order, public safety, public morals or where the interests of juveniles or the protection of the private lives of the parties so require or in special circumstances where in the opinion of the Court publicity would prejudice the interests of justice. It was a right apparently born of the general resentment against the practices of the Spanish Inquisition, the Court of Star Chamber in England and the abuse by the French monarchy of the lettre de cachet, institutions that symbolized in their times a threat to liberty.

The benefits attributed to such publicity have been elaborated by various writers. Cooley in his Constitutional Limitations, 8th Ed., at p. 647, said that " The public may see that the accused is fairly dealt with and not unjustly condemned and that the presence of interested spectators may keep his tryers keenly alive to a sense of their responsibility and to the importance of their functions. In *Wigmore on Evidence*, 3rd Ed., (1940), it is stated that among the benefits are that key witnesses unknown to the parties may come forward and give

important testimony and the spectators learn about their Government and acquire confidence in their judicial remedies. Also that is for the protection of all persons accused of crime—the innocently accused that they may not become the victims of an unjust prosecution, as well as the guilty that they may be awarded a fair trial—that this rule must be observed and applied; as J.E.S. Fawcett observes in the Application of the European Convention of Human Rights, " The members of the public have an interest in overseeing the administration of justice carried on in their name".

In conclusion as to this, it is pertinent to quote from the opinion of Justice Black delivered in the case of *Re William Oliver*, 333, U.S., 257–286:-

> " Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attemp to employ our Courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power."

Article 30 of our Constitution corresponds to Article 6(1) of the European Convention on Human Rights and, Fawcett points out that these permitted exceptions are so extensive that it is doubtful whether the requirement of public hearing under the Convention is likely in practice to yield much protection. However, the fact remains that there are cases where one of the exceptions to the rule as to public trial has to be applied; and the protection of juveniles is one of the permitted exceptions.

In the present case the nature of the complaint and the age of the complainant fully justified the trial Judge in exercising his discretion as he did. The fact that nothing appears on record to have been said by learned counsel for the defence for or against the application of the prosecution regarding the hearing of the complainant's evidence in camera does not, to my mind, change the position as, in the first place, the Court could so rule *ex proprio motu* and, in the second place, had the learned counsel really been minded to object, for any reason to a trial in camera, he could have jumped to his feet and said so, this being a matter affecting the fundamental human rights of a prisoner.

For the above reasons this ground cannot succeed either. Examining the case on the totality of evidence, I have not been able to find that there has been any miscarriage of justice justifying this Court in interfering with this conviction, and I would dismiss the appeal.

STAVRINIDES, J.: I agree.

HADJIANASTASSIOU, J.: I am in agreement with my learned brothers that the appeal should be dismissed, but because in in my view, this Court should at all times remain the most renowned defender of civil rights of a citizen, and since questions of law of considerable public importance are raised, I feel that I should give my own reasons which led me to reach this result.

The Appellant was convicted at the District Court of Paphos on August 6, 1971, on one count charging him with unlawfully and indecently assaulting Anthoulla Ioannou in the month of May, 1971, contrary to section 151 of the Criminal Code Cap. 154, and was sentenced to one year's imprisonment. He now appeals against conviction only.

The facts in this case are simple, and so far as it is necessary for me to state them, can be summarized as follows:– The prosecution called only the complainant as a witness, who told the learned trial Judge that, she was fourteen years of age and a student of the Gymnasium of Paphos. Although she comes from a village, she was staying at the material time, in the house of her married brother, at Eleftheriou Venizelou Street, (admittedly a busy street) in Ktima. She knew the accused, Petros Theodorou, whom she met when he stayed at lunch in the house of her brother. On a Wednesday afternoon in May, 1971, whilst she was sitting reading alone in the yard of the house of her brother, the accused who was driving his lorry loaded with stones, stopped outside the said house. He alighted and, after approaching the complainant, enquired whether her brother was there. She replied that he was out of the house. The accused then requested her to take a bucket of water to pour into the radiator of the lorry. He opened the bonnet of the lorry and when the complainant carried the bucket of water to him, he told her to pour the water herself, because he would be busy doing something else on the lorry. Whilst the complainant was ready to pour the water, he took her from the armpits, lifted her up and placed

her on the front bumper of the lorry. When she started pouring the water, and whilst the accused was standing behind still holding her, he placed his hands on her buttocks inside her dress and started touching her knickers whilst his body was pressing hers against the lorry. When in protest she told him that she was going to tell her brother about that incident, he immediately let her free, and without adding a word, drove off in his lorry. Because the complainant was afraid of her brother getting angry with her, she did not report the incident to him, but complained to her sister Soulla—another pupil of the same Gymnasium—one or two days after the incident. The matter was reported to the police within a few days, because, as the complainant put it, "they heard something else about the accused".

The accused, a lorry driver by profession, was sixty years of age, and comes from Pakhna village of Limassol District. He denied that he indecently assaulted the complainant, although he admitted that he had lunch in the house of the brother of the complainant sometime in March or early in April, 1971; but he added, the girl was not at the house at the time.

The learned trial Judge, who has seen and heard both witnesses, made his findings of fact, which depend entirely on the credibility of the witnesses, and in his careful judgment had this to say:-

> "I have watched carefully the demeanour of both complainant and the accused whilst giving evidence before me. According to the accused the girl either imagined this story or fabricated it; there is no question of accidental assault; he did not pass from outside her house in May; he occasionally deviated from his main route along the highway outside the Hospital, into side roads and then from outside her house, but not in May—accused alleges. I do not believe him. Having watched him for considerable time in the witness box he gave me the impression of a liar. I do not accept his evidence. Unlike accused, I have no doubt in my mind that Anthoulla has told me the truth without exaggeration; she admitted things which on first sight might be considered as incompatible with the truth, like for example the fact that at the time of the assault some cars passed along the road near them. She hid nothing from the

Court. She is an honest young school girl who at first thought that her brother might get angry with her about the incident irrespective of whether she is to blame for it or not and concealed it from him. This might appear to be unnatural, unreasonable or strange, but she is not residing in London or Nicosia; she is a girl from the small village of Messana of Paphos District. If one has this in mind, I am sure he will accept her explanation as being both reasonable and true. She was unbiased and fair to the accused all the time whilst she was giving evidence. As I have said, I watched her carefully for long in the witness box and it is clear to me that she told me the whole truth and nothing but the truth. I accept her evidence wholly."

Counsel for the Appellant in his forceful argument, made two propositions to which counsel for the Respondent took exception. The first proposition was that, the conviction of the Appellant should be set aside since the trial Judge was disqualified because although the evidence for the prosecution was so weak, unreasonable and unnatural, nevertheless in the absence of any corroborative evidence, the trial Judge decided to act upon such evidence, and rejected the version of the Appellant, since he must have been influenced because of his knowledge of two previous convictions of the Appellant and the pending case before him. In support of this proposition, counsel referred us to a passage in paragraph 602(3) in Archbold Criminal Pleadings, Evidence and Practice, 37th edn., (1967) at p. 184, on the question of knowledge of a defendant's previous convictions, which is in the following terms:-

"Knowledge of a defendant's previous convictions or character by a member of the jury is not an automatic disqualification which prevents him from sitting as a juror. Any juror who knows the defendant or knows from hearsay as to his bad character, ought not, however, to sit and should himself ask to be excused".

In *John Syme* [1914] 10 Cr. App. R. 284, Mr. Justice Bankes, delivering the Court's judgment regarding misconduct of a jury man, said at p. 287:-

"The application is now made, and there is nothing to support it but the statement of the Appellant that some

one else has told him that he was in a position to give certain evidence. No affidavit and no statement of the names of the persons who repeated this allegation comes before the Court, and it comes very near to being mere gossip; and when one considers that that is the nature of the application, what does it amount to? The Appellant says that some one else said that another person had told him a remark alleged to have been made by a jury man. Assuming that something of the kind was said, is it anything more than a kind of anticipatory statement of what the jury man thought was likely to happen? It may be unwise to make such a statement, but unless he says that whatever the evidence may be he is determined to come to a certain result, it cannot be a ground for interfering with the conviction. On these grounds the application to call evidence is not granted."

In *John Box, Neville Austin Box* [1963] 47 Cr. App. R., 284, Parker, L.C.J., delivering the judgment of the Court consisting of five Judges, followed the reasoning behind the case of *Syme* (*supra*) and said at pp. 286 and 287:-

" So far as the foreman himself is concerned, an application was made to call him, and while there is no concluded decision in the reports as to the principle to be applied in regard to such a case, it is to be observed that at the end of the judgment in the case of *Syme* ([1914] 10 Cr. App. R. 284), Bankes J., as he then was, said this: 'It may be unwise to make such a statement; but unless he says that whatever the evidence may be he is determined to come to a certain result, it cannot be a ground for interfering with the conviction.' It is to be observed that Bankes J. was not stating that as a principle, but stating that as the high-water-mark of the evidence which would be necessary before the Court could possibly interfere with the conviction in any case. Accordingly, without ruling on the matter, this Court decided to hear the evidence of the foreman, Mr. Oldridge *de bene esse*.

Having heard him, it is perfectly clear to this Court that he had not come to a determination before hearing the evidence. He says that he had no views at the outset when the charges were read out, but that as the case went along he formed a definite view. In other words, his evidence falls far short of what Bankes, J. said would be

the facts which would have to be proved before this Court could interfere."

Later on, the Court, having heard argument by Mr. Lyons on behalf of the Appellant that, the foreman was disqualified from sitting and hearing the case in the sense that whatever he says his knowledge must have influenced him, and that at any rate even if a fair trial did result, justice was not seen to be done, had this to say:-

> " *This Court knows of no case, and none has been referred* to us, in which knowledge of a prisoner's previous convictions or character by a member of the jury has been held to be, as it were, an automatic disqualification, or to prevent him from hearkening to the evidence, observing the oath which he has taken, and affording the prisoner a fair trial. There are no such cases, and this Court is quite satisfied that while it is unnecessary to lay down an absolutely general rule, so far as this case is concerned, there is no proof that the foreman was unable to do what he had sworn to do by his oath, and did not do so.
>
> The Court would, however, add that nothing that they have said must be taken to approve in any way of the foreman's conduct. A foreman, or indeed any juror, who knows a prisoner, or knows from hearsay of the prisoner's bad character, ought not to sit on the jury".

Although I am indeed indebted to Mr. Clerides for his able argument and for his labours, nevertheless, I am of the opinion that his first proposition is not right, because I know of no case, and none has been referred to us, in which knowledge of a prisoner's previous convictions or character by a member of the trial Court in any of the countries adopting the common law was considered to be a reason for disqualification. The mere fact, of course, that in Cyprus a trial Judge is functioning both as a Judge and a juror in hearing a case, is not a reason that he should become automatically disqualified because of his knowledge of the previous convictions of the accused. And one should not lose sight for a moment that there is a difference of substance regarding the functions of their duties in the administration of justice. A conviction, of course, by a trial Court is not like the verdict of twelve reasonable men sitting as a jury, but the decision of a Judge or Judges sitting

in banco. Unlike a jury, the trial Court is obliged to give reasons for their decision, and these reasons are part of the record of the proceedings upon an appeal. It is pertinent, therefore, to state that it is unthinkable, that a Judge, in view of his experience and training to administer justice to all men, in accordance with his judicial oath to carry out his duties without fear or favour, in trying the case of the Appellant, should have been influenced because of his knowledge of his previous convictions and not to afford the accused a fair hearing which accords with the past tradition of an independent and impartial judiciary in Cyprus functioning under the law and the Constitution.

Needless to say that if going through the record, as I have done in this case, I should have been able to find or come across anything which in any way would suggest, or anything said during the trial which would indicate to this Court that the learned trial Judge, because of his knowledge as to the previous convictions of the Appellant was determined in advance not to afford him a fair trial in the determination of the criminal charge against him, or listen to the evidence with an unbiased mind, then I would have been prepared to express the view that the Judge would have been disqualified once he has acted in violation of his oath, of the law and of the Constitution of this land. Cp. Article 10 of the Universal Declaration of Human Rights; and cf. *Tumey* v. *Ohio*, 71 Law. Ed. (1926) U.S. 272–274 at p. 749, in which the authorities in America are reviewed regarding the disqualification of a trial Judge.

Moreover, one should not forget, of course, the realities prevailing in Cyprus, that before the same trial Judge would appear a number of known criminals to him, and no-one before has suggested that because of his knowledge he, the particular trial Judge, would not be capable of bringing an entirely impartial mind to the hearing of the particular criminal case. In fairness, however, to counsel for the Appellant, in his extremely careful drafting of the grounds of law, he is not complaining of the high integrity of the trial Judge, but only regarding his influence because of his knowledge as to the previous convictions of the Appellant.

Regarding the further argument—after reading the record—I find myself unable to agree that the evidence before the Judge was weak, unreasonable and unnatural, and as I have said

earlier, the findings of the Court were based on the credibility of the witnesses, and I find no reasons for interfering with the decision of the Court. Be that as it may, I do not think that there was room for complaint by counsel for the Appellant that the Judge has not properly applied his mind to the legal principles as expounded in *Makris* case—quoted by him—in his judgment reported in 1961 C.L.R. 330, with regard to the danger to act on the uncorroborated evidence of the complainant.

The second contention of counsel was that, the trial Court deprived the Appellant of his rights under Article 30 of the Constitution of having his case tried in public, by ordering the proceedings to be taken in camera without asking the views of the defence on such an important issue. Having given this matter my anxious consideration, I find myself in agreement with counsel, that justice should be administered in public, and the public have the right to be present at the sittings of all Courts unless there are special circumstances. I propose quoting from the leading case on this topic, that is to say, *Scott* v. *Scott* which was decided by the House of Lords and is reported in [1913] A.C. 417:

> "The general rule as to publicity must yield to the paramount duty of the Court to secure that justice is done; and it is open to a party in a matrimonial suit upon proof that justice cannot be done otherwise, to apply for a hearing in camera, and even for the prohibition of subsequent publicity in the proceedings in exceptional cases". Per Viscount Haldane L.C.

In *Rex* v. *Sussex Justice, McCarthy ex parte* [1924] 1 K.B. 256, Lord Hewart C.J. said at p. 259:-

> "..... a long line of cases shows that it it not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

The late Lord Goddard, C.J. amplified this in *Rex* v. *Caernarvon Licensing Justices Ex Parte Benson* [1949] 113 J.P. 23 at p. 23, where he said:-

> "..... that is one of the main reasons why all Courts of Justice are open to the public, so that the public may see justice done, and justice must be done in a way

which will satisfy the minds of the public that it is not only being done, but is obviously and clearly being done."

In *B.* v. *Attorney-General* [1965] 3 All E.R. 253, Wrangham Justice in his judgment at p. 256, applied and adopted the dictum of Lord Merrivale, P., in *Greenway* v. *A.G.* [1927] 44 T.L.R. 124, at p. 126. Lord Merrivale said this:-

"I myself do not regard it as part of the law laid down by *Scott* v. *Scott* that if publicity will deter a litigant from proceeding to obtain redress he should be allowed to bring his suit in camera."

Regarding the question on the same topic in the United States of America, the constitutional right is guaranteed, and in all criminal proceedings the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district, wherein the crime shall have been committed. The question what constitutes a public trial the right to which is guaranteed and what discretion the Court may exercise in limiting the audience and spectators is one upon which the cases differ. Cf. *Spies* v. *Illinois*, 31 Law. Ed. p. 80.

In Cyprus of course, the right of an accused person to a public trial is also guaranteed by Article 30 of our Constitution which so far as relevant, is in these terms:-

"In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent Court established by law."

From an examination of the record of the trial Court, it appears that the trial was not conducted in public, and the order of the Court complained of dated August 3, 1971, which was made on the application of the prosecution, reads as follows:

"I intend to call as my first witness the complainant and in view of her age and the contents of her statement I apply that her evidence be taken in camera.

Court:- Let the public clear the Court room whilst this witness is giving her evidence".

It is true that, neither counsel appearing for the accused was asked whether he had anything to submit regarding the

constitutional right of the accused to a public trial, nor did the trial Judge in his ruling give any reasons for taking that step to deprive the accused of his constitutional rights.

But that this constitutional right of the accused is not absolute and it can be curtailed or regulated, appears from the wording of the very same Article 30, which provides that "the press and the public may be excluded from all or any part of the trial upon a decision of the Court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety, or the public morals, or where the interests of juveniles, or the protection of the private life of the parties so require, or, in special circumstances where, in the opinion of the Court, publicity would prejudice the interests of justice".

In the case of the Appellant, as I said earlier, he was represented by counsel who never objected to the decision of the trial Judge to hear the case in camera. After a careful consideration and in the light of the facts of this case, particularly so because the complainant was a young girl of fourteen years of age, and a student, I have reached the conclusion, that the trial Judge must have properly exercised his discretionary powers to hear the case not in public, when the complainant was giving evidence only, apparently taking the view that, it was in the interest of this young girl, which was in accordance with the Constitutional provision of this country. I would, therefore, affirm the judgment of the trial Judge because, after considering the trial as a whole, in my view the Appellant was afforded a fair trial.

In *Christou* v. *Christou*, 1964 C.L.R. 336 at p. 346 the distinction is drawn between the provisions of the European Convention of Human Rights relating to a fair trial and those of our Constitution which are wider as applicable to civil cases as well.

For the reasons I have tried to explain, I would also dismiss this proposition of counsel for the Appellant.

STAVRINIDES, J.: In the result the appeal is dismissed. Sentence to run from the date of conviction.

Appeal dismissed.