[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

ALI OSMAN HASSAN,

Respondent.

(*Criminal Appeal No.* 3282).

Narcotic Drugs—Cannabis sativa—Knowingly planting—Section 8 *of the Narcotic Drugs Law*, 1967 (*Law No.* 3 *of* 1967)—*Four cannabis plants found in the middle of a field of Respondent, planted with other plants—Lack of knowledge that plants in question were of the cannabis genus—No proof of guilt beyond reasonable doubt—Acquittal—Appeal against such acquittal by the Attorney-General—Not established that the trial Judge misdirected himself regarding the principle of law governing the proof of guilt in criminal cases or that he did misapply it to the facts before him—The criminal Procedure Law, Cap.* 155, *section* 137 (1) (*a*) (*i*) *and* (*iii*).

Acquittal—Appeal against by the Attorney-General—Grounds on which such appeal may be made—Cap. 155 *section* 137 (1) (*a*), supra.

Appeal against acquittal by, or with the sanction of, the Attorney-General—Section 137 (1) (*a*) *of Cap.* 155—*See* supra.

In this case the Attorney-General appeals against the acquittal of the Respondent by the District Court of Famagusta on a count charging him with having knowingly cultivated cannabis plants contrary to section 8 of the Narcotic Drugs Law, 1967 (Law No. 3 of 1967).

This appeal was made under section 137 (1) (a) (i) and (iii) of the Criminal Procedure Law, Cap. 155, of which sub-paragraphs (i) and (iii) provide that an appeal as this one may be made, or be sanctioned, by the Attorney-General on, respectively, the ground "that there was no evidence on which the Court could reasonably, find a fact or facts necessary to support" its judgment and on the ground "that the law was wrongly applied to the facts".

The salient facts of the case are, very briefly, that in the middle of a field of the Respondent, which was planted with other crops, there were found by the police four cannabis plants; the Appellant denied knowledge of the nature of the plants and stated that they had grown on their own.

Dismissing this appeal by the Attorney-General against the acquittal of the Respondent referred to above, the Supreme Court:-

Held, (1) (a). Regarding the submission of counsel for the Appellant under the said sub-paragraph (iii) of section 137(1)(a) of Cap. 155 (*supra*) that the trial Judge on a proper application to the facts of this case of the principle of law governing the proof of guilt in a criminal case ought not to have felt any doubt about the guilt of the Respondent,—we are of the view that it has not been established that the trial Court misdirected himself regarding such principle or that he misapplied it to the facts before him.

(b) In this respect we cannot hold, as submitted by counsel for the Appellant, that the trial Judge erred in giving to the Respondent the benefit of the doubt even though he found the Respondent to be an unreliable witness: In the light of the aforesaid principle the Judge was entitled in law to decide as he has done (see, *inter alia,* the cases of *Woolmington* v. *D.P.P.* 25 Cr. App. R. 72 and *Kafalos* v. *The Queen,* 19 C.L.R. 121, which were followed in *Charitonos and Others* v. *The Republic,* reported in this Part at p. 40 *ante*).

(2) Counsel for the Appellant has submitted, under sub-paragraph (i) of section 137 (1) (a) *supra,* that there was no evidence on which the trial Judge could reasonably find that there existed "wild growth about the garden" of the Respondent: This was a finding of fact necessary to support the judgment appealed from as it was because, *inter alia,* of this finding that the Judge felt doubt as to whether the Respondent was aware of the nature of the four cannabis plants in question.

We have perused the relevant evidence on record and we are of the view that such evidence might give rise to the inference that there was wild growth—other than the cannabis plants—in the garden of the Respondent. So we cannot say that there was no evidence on which the trial Court could find as it did.

Appeal dismissed.

Cases referred to:

Woolmington v. *D.P.P.*, 25 Cr. App. R. 72;

Kafalos v. *The Queen*, 19 C.L.R. 121;

Charitonos and Others v. *The Republic*, reported in this Part at p. 40, *ante;*

Xenophontos v. *Charalambous*, 1961 C.L.R. 122;

Warner v. *Metropolitan Police Commissioner* [1968] 2 All E.R. 356;

Sweet v. *Parsley* [1969] 1 All E.R. 347;

R. v. *Niemira* [1970] Crim. L.R. 28;

R. v. *Fermandez* [1970] Crim. L.R. 277;

R. v. *Marriott* [1971] 1 All E.R. 595.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the acquittal of the Respondent by the District Court of Famagusta (Pikis, D.J.) on a count charging him with having knowingly cultivated cannabis plants, contrary to section 8 of the Narcotic Drugs Law, 1967 (Law No. 3 of 1967).

A. Frangos, Senior Counsel of the Republic, for the Appellant.

O. Mehmet, for the Respondent.

The judgment of the Court was delivered by:–

TRIANTAFYLLIDES, P.: In this case the Attorney-General of the Republic has appealed against the acquittal of the Respondent, by the District Court in Famagusta, on a count charging him with having knowingly cultivated cannabis plants, contrary to section 8 of the Narcotic Drugs Law, 1967 (Law 3/67).

Learned counsel who appeared for the Appellant has stated that this appeal is being made under sub-paragraphs (i) and (iii) of section 137(1)(a) of the Criminal Procedure Law, Cap. 155, which provide that an appeal such as this one may be made, or be sanctioned, by the Attorney-General on,

respectively, the ground "that there was no evidence on which the Court could reasonably find a fact or facts necessary to support" its judgment and on the ground "that the law was wrongly applied to the facts".

The salient facts of this case are, very briefly, that in the middle of a field of the Respondent, which was planted with other crops, there were found by the police four cannabis plants; the Appellant denied knowledge of the nature of the plants and stated that they had grown on their own.

The learned trial Judge found that the Respondent had been cultivating the cannabis plants because he "not only tolerated the existence of those plants, but contributed to their growth by irrigating the area where they were growing". He, then, after referring to the cases of *Warner* v. *Metropolitan Police Commissioner* [1968] 2 All E.R. 356, *Sweet* v. *Parsley* [1969] 1 All E.R. 347, *R.* v. *Niemira* [1970] Crim. L.R. 28, *R.* v. *Fernandez* [1970] Crim. L.R. 277, and *R.* v. *Marriott* [1971] 1 All E.R. 595, took the view that there ought to be satisfactory proof that the Respondent "was not only cultivating cannabis, but that he was aware at the time of such cultivation that the plants in question were of the cannabis genus"; and after considering the evidence before him he reached the conclusion that the guilt of the Respondent had not been proved beyond any reasonable doubt.

An appeal against an acquittal, such as this appeal, can only succeed on one of the four specific grounds which are set out in section 137 (1) (a) of Cap. 155 (see *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122); and in this particular case we are concerned with only two of such grounds, those in sub-paragraphs (i) and (iii) of section 137 (1) (a), which have been relied upon by the Appellant.

Regarding the submission of counsel for the Appellant, under sub-paragraph (iii) section 137 (1) (a), that the trial Judge on a proper application to the facts of this case of the principle of law governing the proof of guilt in a criminal case ought not to have felt any reasonable doubt about the guilt of the Respondent, we are of the view that it has not been established that the trial Judge misdirected himself regarding such principle or that he misapplied it to the facts before him.

In this respect we cannot hold, as submitted by counsel for the Appellant, that the trial Judge erred in giving to the

Respondent the benefit of the doubt even though he found the Respondent to be an unreliable witness: In the light of the aforesaid principle (see, *inter alia*, the cases of *Woolmington* v. *D.P.P.*, 25 Cr. App. R. 72 and *Kafalos* v. *The Queen*, 19 C.L.R. 121, which were followed in *Charitonos and Others* v. *The Republic*, (reported in this Part at p. 40 *ante*) the Judge was entitled in law to decide as he has done.

Counsel for the Appellant has submitted, under sub-paragraph (i) of section 137 (1) (a), that there was no evidence on which the trial Judge could reasonably find that there existed "wild growth about the garden" of the Respondent: This was a finding of fact necessary to support the judgment appealed from as it was because, *inter alia*, of this finding that the judge felt doubt as to whether the Respondent was aware of the nature of the four cannabis plants.

We have perused the relevant evidence on record, and particularly the evidence referred to in connection with the finding in question by the trial Judge in his judgment, and we are of the view that such evidence might give rise to the inference that there was wild growth—other than the cannabis plants—in the garden of the Respondent. So we cannot say that it has been established that there was no evidence on which the trial Court could find as it did.

In concluding we would like to stress that this was, indeed, a serious case and, therefore, it cannot in any sense be said that this was not a case in which it was proper to bring the matter before this Court on appeal; however, for the reasons given the appeal is dismissed.

Appeal dismissed.