

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS

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

CHRISTOS IOANNOU KEFALOS,

Appellant,

v.

THE POLICE,

Respondents.

1972
Jan. 3
—
CHRISTOS
IOANNOU
KEFALOS
v.
THE POLICE

(Criminal Appeal No. 3296).

Criminal Procedure—Plea—Plea of guilty—Plea in mitigation of sentence inconsistent with plea of guilty—Appeal against sentence filed without assistance of counsel—Conviction on the basis of such plea of guilty set aside, the said appeal against sentence having been treated by consent as one against conviction—New trial ordered—Attorney-General v. Mahmoud, 1962 C.L.R. 181 and Polykarpou v. The Police (1967) 2 C.L.R. 152.

Plea of guilty—Conviction—Appeal against sentence treated in the circumstances as an appeal against conviction—Conviction set aside—New trial ordered.

Cases referred to:

The Attorney-General of the Republic v. Mahmoud, 1962 C.L.R. 181, followed;

Polykarpou v. The Police (1967) 2 C.L.R. 152, followed.

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The facts sufficiently appear in the judgment of the Court, setting aside the conviction and ordering a new trial, after this appeal against sentence had been treated in the circumstances of this case as an appeal against conviction.

Appeal against sentence.

Appeal against sentence by Christos Ioannou Kefalos who was convicted on the 18th October, 1971, at the District Court of Kyrenia (Criminal Case No. 969/71) on one count of the offence of obtaining goods by false pretences contrary to sections 297 and 298 of the Criminal Code Cap. 154 and was sentenced by Pitsillides, D.J. to three years' imprisonment.

L. Clerides, for the Appellant.

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

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: In this case the Appellant, who while in prison filed this appeal without the assistance of counsel, complains that the sentence of three years' imprisonment, which was passed upon him after he had pleaded guilty to a charge of obtaining goods by false pretences, contrary to section 298 of the Criminal Code (Cap. 154), is excessive.

When he first appeared before us, again without the assistance of counsel, he made certain statements which appeared to us to raise questions, *inter alia*, as to the exact circumstances in which he pleaded guilty and as to whether he has had a fair hearing before the trial Court.

As he applied to us for legal aid, stating that he lacked the means to retain counsel on his own, arrangements were made to make available to him such aid.

Counsel for the Appellant has raised the point that the plea in mitigation, which was made by the Appellant after he had pleaded guilty, was inconsistent with his plea of guilty, inasmuch as the Appellant denied the existence of an intention to defraud, which is an essential ingredient of the offence for which he had been brought before the trial Court. Counsel for the Respondents did not object to such point being raised and we allowed it to be argued, as the notice of appeal

was, as stated, framed by the Appellant, while in prison, and without legal assistance.

It is well-established that if the plea in mitigation is inconsistent with the plea of guilty then the conviction on the basis of the plea of guilty cannot be sustained and a new trial has to be ordered; see, *inter alia*, *The Attorney-General of the Republic v. Mahmout*, 1962 C.L.R. 181; *Polykarpou v. The Police* (1967) 2 C.L.R. 152. It is significant to note that in each of these two cases the Appellant had the benefit of legal advice when he appeared before the Court below. In the present case the position is much stronger in favour of the Appellant because he appeared without counsel before the trial Court; and after the facts had been explained by the prosecution he made a statement which shows that he was in a way denying an intention on his part to defraud. In the circumstances it was the duty of the trial Judge to clarify the position before proceeding to impose sentence upon the Appellant.

We agree with, and we appreciate, the fair submission of counsel for the Respondents that the better course in this case is to quash the conviction and order a new trial.

In the result, therefore, the conviction and the sentence imposed on the Appellant are set aside and a retrial is ordered before another Judge; the Appellant to remain in custody in the meantime.

Appeal allowed; retrial ordered.

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