1972
April 13
—
EVRIPIDES
CHRISTOU
v.
THE POLICE

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

EVRIPIDES CHRISTOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3333).

Grievous harm—What constitutes grievous harm—Section 4 *of the Criminal Code, Cap.* 154*—Painful fractured rib resulting in hospitalization for two days—Held to be an injury within the definition of "grievous harm" in the said section* 4*—Injury which seriously injured complainant's comfort.*

Trial in criminal cases—Evidence—Self-defence—Plea of self-defence to be disproved by prosecution in certain circumstances—Questions as appear to the trial Judge properly to arise upon the evidence to be dealt with even though the defence has not raised them—Issue of self-defence not raised by the Appellant at his trial nor was there any evidence as to self-defence—In the circumstances this was not a case in which either the prosecution had to disprove self-defence or the trial Court had to deal with such a matter.

Self-defence—Question not raised by accused (now Appellant) at his trial—Nor was there any evidence warranting such a plea—Consequently the prosecution had nothing to disprove and the trial Court could not be expected to deal with such matter—Cf. supra.

Right of a person to be defended through a lawyer of his own choosing—Article 12.5(*c*) *of the Constitution—Failure of advocate to turn up at the trial—Appellant not applying for an adjournment, in order to be enabled to instruct another advocate, but choosing to defend himself in person—No violation of aforesaid constitutional right.*

Constitutional Law—Article 12.5(*c*) *of the Constitution—See immediately hereabove.*

Advocate—Constitutional right of a person to be defended by a lawyer of his own choosing—Article 12.5(*c*) *of the Constitution—See* supra.

Words and Phrases—"Grievous bodily harm" in sections 4 and 231, of the Criminal Code, Cap. 154.

Cases referred to:

R. v. *Wheeler*, 52 Cr. App. R. 28;

Mancini v. Director of Public Prosecutions, 28 Cr. App. R. 65;

Miliotis v. *The Police* (1971) 2 C.L.R. 292, at p. 297.

The facts sufficiently appear in the judgment of the Court, dismissing this appeal against conviction of the offence of causing grievous bodily harm contrary to section 231 of the Criminal Code, Cap. 154.

Appeal against conviction.

Appeal against conviction by Evripides Christou who was convicted on the 28th February, 1972 at the District Court of Paphos (Criminal Case No. 4688/71) on one count of the offence of causing grievous bodily harm contrary to section 231 of the Criminal Code Cap. 154 and was sentenced by Boyiadjis, D.J. to six months' imprisonment.

L. Clerides with *E. Lemonaris*, for the Appellant.

M. Kyprianou, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant has appealed against his conviction of the offence of causing grievous harm, contrary to section 231 of the Criminal Code, Cap. 154.

Before the trial Court he appeared without counsel and so he conducted his own defence himself.

Counsel who appeared for him today, in this appeal, have done their best to present whatever could be said in his favour.

It has been submitted that the Appellant was deprived of his constitutional right, under Article 12.5(c) of the Constitution, to be defended "through a lawyer of his own choosing": The position appears to be that before the date of the trial the Appellant had retained, and paid, an advocate to appear for him; as, however, this advocate failed to turn up at the trial, the Appellant chose to defend himself in person; he did not apply for an adjournment in order to be enabled

to instruct another advocate. In the circumstances we fail to see how it can be validly said that the Appellant is the victim of a violation of Article 12.5(c).

Another contention of Appellant's counsel has been that the injury suffered by the complainant, namely a fractured rib, though a painful one and though, together with other less serious injuries, it caused his hospitalization for two days, was not "grievous harm" within the meaning of this expression as defined in section 4 of Cap. 154, because it was not really serious bodily harm.

The definition of "grievous harm" in section 4 reads as follows:-

> " 'grievous harm' means any harm which amounts to a maim or dangerous harm or seriously or permanently injures health or comfort or which is likely so to injure health or comfort, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense".

In view of the particular circumstances of this case we are in agreement with the learned trial Judge that the fractured rib of the complainant, which was painful and made him stay in hospital for two days, was an injury which did seriously " injure", *inter alia*, the " comfort" of the complainant; and, therefore, it was an injury within the definition of " grievous harm" in section 4.

The last point which was raised in favour of the Appellant is that the trial Judge, having disbelieved the version of the Appellant, to the effect that he did not assault at all the complainant but that it was the complainant who assaulted him, failed to consider whether this was a case in which the Appellant was entitled to be acquitted on the ground of self-defence:

As has been, indeed, pointed out in the case of *Wheeler*, 52 Cr. App. R. 28, when an accused puts forward a justification such as self-defence the prosecution must disprove it before a verdict of guilty can be reached (and *Wheeler* was referred to in, *inter alia*, *Miliotis* v. *The Police* (1971) 2 C.L.R. 292, at p. 297). Also, in the case of *Mancini* v. *Director of Public Prosecutions*, 28 Cr. App. R. 65, it was held that, whatever the line of defence adopted at the trial, such questions as appear

to the trial Judge properly to arise upon the evidence have to be dealt with, even though the defence has not raised them. But, in the present case, the issue of self-defence was not raised by the Appellant in defending himself; he denied having assaulted at all in any way the complainant, both by his statement to the police and in a statement from the dock at the trial; nor was there any evidence as to self-defence. In the circumstances we are of the view that this was not a case in which either the prosecution had to disprove self-defence or the trial Court had to deal with such a matter.

For all these reasons this appeal fails and is dismissed; but as this is a case in which it appears that the Appellant in committing the offence concerned was to some extent provoked, due to a dispute over water rights with the complainant, we have decided to direct that the sentence of six months' imprisonment, which was passed on the Appellant, should run from the date of conviction.

Appeal dismissed.