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

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

KYRIACOS CHRYSANTHOU PETROU,

Respondent.

(*Criminal Appeal No.* 3336).

Criminal Procedure—Appeal—Appeal by the Attorney-General from an acquittal on a charge for defilement of a girl under sixteen—On the ground that the trial Court wrongly applied the law to the facts of this case—Section 137 (1) (*a*) (*iii*) *of the Criminal Procedure Law, Cap.* 155—*Corroboration of complainant's evidence—Required not by a rule of law but by a rule of practice—Failure of the trial Judge to deal with a particular fact, which should have been considered in order to determine whether there existed corroboration in accordance with the said rule, amounts to misapplication of the law to the facts of the case—Appeal allowed—Retrial ordered.*

Criminal Appeal—By the Attorney-General from an aquittal—Wrong application of the law to the facts of the case—Section 137 (1) (*a*) (*iii*) *of Cap.* 155 (supra)—*See* supra.

Corroboration—Sexual offences—Rule of practice requiring corroboration of the evidence of the complainant—Can be properly treated as coming within the ambit of the term "law" in section 137 (1) (*a*) (*iii*) *of the Criminal Procedure Law, Cap.* 155.

Sexual offences—Defilement of a girl under sixteen contrary to section 154 *of the Criminal Code Cap.* 154—*Evidence—Corroboration of complainant's evidence required by a rule of practice—See* supra.

Evidence in criminal cases—Sexual offences—Corroboration of complainant's evidence—Required by a rule of practice—See supra.

Words and Phrases—" Law" in section 137 (1) (*a*) (*iii*) *of the Criminal Procedure Law, Cap.* 155—*See* supra *under: Corroboration.*

This is an appeal by the Attorney-General from the acquittal of the Respondent on a charge of defilement of a young girl of fifteen contrary to section 154 of the Criminal Code Cap. 154.

Apart from the complainant's evidence there was given evidence by prosecution witness S.M. that at the material time he saw the Respondent and the complainant entering Respondent's room and that, while watching through an aperture on the wall of the room, he saw the Respondent taking hold of both arms of the complainant and pushing her away from the aperture. The complainant's evidence in this respect is that, while in the room, the Respondent embraced her and then went on to have sexual intercourse with her.

The trial Judge without referring to the evidence of the said witness S.M. stated that he was not prepared to act on the uncorroborated evidence of the complainant and held that as there existed no such corroboration of her evidence the Respondent ought to be discharged.

It is against this acquittal that the Attorney-General took the present appeal on the ground that the trial Judge acting as he did " the law was wrongly applied to the facts" (see section 137 (1) (a) (iii) of the Criminal Procedure Law, Cap. 155).

Allowing the Appeal and ordering a retrial of the case, the Supreme Court:-

Held, (1). In a case such as the present one corroboration of the complainant's evidence is required by a rule of practice and not by a rule of law.

(2) However, in our view in a case such as this the law may be applied wrongly to the facts, in the sense of section 137 (1) (a) (iii) of the Criminal Procedure Law, Cap. 155 (*supra*), by either finding wrongly in law that a particular fact does not amount to corroboration or by omitting to deal with a material fact which ought to be considered in order to determine whether there exists corroboration.

(3) In this case we are faced with the latter of these two alternative situations: The trial Judge took the view that the "presence" of the complainant in the room of the Respondent did not amount to corroboration because it was " also consistent with innocence". But, as stated, the Judge did not deal with

the fact that at the material time the complainant was not merely present in the Respondent's room but she was there and then seen, by the said witness S.A., being taken hold of by the Respondent and being pushed away from the aperture through which somebody outside the room could see what was happening therein.

(4) Thus, there has been a misapplication of the law to the facts of the case (see said section 137 (1) (a) (iii) of Cap. 155, *supra*) and the appeal must be allowed and a retrial ordered, by a new Judge.

Appeal allowed.
Retrial ordered.

Cases referred to:

Makris v. *The Police*, 1961 C.L.R. 330, at p. 336;

Theodorou v. *The Police* (1971) 2 C.L.R. 245;

R. v. *Farler*, 8 C. and P. 107.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the decision of the District Court of Limassol (Chrysostomis, Ag. D.J.) given on the 15th March 1972 (Criminal Case No. 1723/71) whereby the Respondent was acquitted of the offence of defilement of a girl 15 years of age, contrary to section 154 of the Criminal Code Cap. 154.

A. Frangos, Senior Counsel of the Republic with *C. Kypridemos*, for the Appellant.

Y. Agapiou with *S. Papakyriacou*, for the Respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: In this case the Attorney-General of the Republic appeals against the decision of the District Court of Limassol whereby the Respondent was acquitted of the offence of defilement of a young girl fifteen years of age under section 154 of the Criminal Code, Cap. 154. The appeal has been made under section 137 (1) (a) (iii) of the Criminal Procedure Law, Cap. 155, on the ground that "the law was wrongly applied to the facts."

What happened is that when at the close of the case for the prosecution counsel for the Respondent—at that time the accused—submitted that a *prima facie* case had not been made out against his client sufficiently to require him to make a defence, the trial Court decided that it was not prepared to act on the uncorroborated evidence of the complainant and that as in the rest of the evidence adduced there existed no corroboration of her evidence the Respondent ought to be discharged.

The count of defilement, in respect of which the Respondent was acquitted, related to events which took place on the 21st day of September, 1971, at Ayios Ioannis (Agrou); on that day, at about 9 p.m., the Respondent was with the complainant in a room of his house and there, according to the complainant, he proceeded to have carnal knowledge of her.

There was given evidence by prosecution witness Savvas Mappourides that at about 9 p.m. on the 21st September, 1971, he saw the Respondent and the complainant entering Respondent's room and that, while watching through an aperture on the wall of the room, he noticed the Respondent taking hold of both arms of the complainant and pushing her away from the aperture. The complainant's evidence in this respect is that, while in the room, the Respondent embraced her and then went on to have sexual intercourse with her.

The learned trial Judge when dealing with the issue of corroboration did not refer to the above-mentioned evidence of Mappourides.

In a case such as the present one corroboration of the evidence of the complainant was required not by a rule of law but by a rule of practice (see, *inter alia*, *Makris* v. *The Police*, 1961 C.L.R. 330, and *Theodorou* v. *The Police* (1971) 2 C.L.R. 245). Such rule of practice is based on the same notion as the rule of practice requiring corroboration of the evidence of an accomplice and so it "deserves all the reverence of law" (see *R.* v. *Farler*, 8 C. & P. 107). In relation to the rule in question Vassiliades, J.,—as he then was—has stated in the *Makris* case (*supra* at p. 336): " So long as the reactions of human nature to social rules regarding sex are as they have been known to be for many years past this well established rule cannot be relaxed without jeopardizing justice in such cases." We think, therefore, that such rule of practice can

be properly treated as coming within the ambit of the term "law" in section 137 (1) (a) (iii) of Cap. 155.

In our view in a case such as this one the law may be applied wrongly to the facts, in the sense of the said section 137 (1) (a) (iii), by either finding wrongly in law that a particular fact does not amount to corroboration or by omitting to deal with a material fact which ought to be considered in order to determine whether there exists corroboration. In this case we are faced with the latter of these two alternative situations: The trial Judge took the view that the "presence" of the complainant in the room of the Respondent did not amount to corroboration because, in the light of relevant considerations, it was "also consistent with innocence". But, as stated, the Judge did not deal with the fact that on the night of the 21st September 1971, when the complainant alleges that the Respondent had carnal knowledge of her, the complainant was not merely present in the Respondent's room but she was there and then seen, by witness Mappourides, being taken hold of by the Respondent and being pushed away from the aperture through which somebody outside the room could see what was happening therein.

In our view by failing to deal with what witness Mappourides saw as aforesaid—(and we express no opinion whether his relevant evidence should have been treated as credible or as corroboration of the complainant's evidence)—the trial Judge omitted to deal with a particular fact which should have been considered in order to determine whether there existed corroboration, in accordance with the relevant rule, of the evidence of the complainant; and, thus, there has been a misapplication of the law to the facts of the case.

This appeal, therefore, is allowed and a retrial is ordered before another Judge of the District Court of Limassol.

Appeal allowed.
Retrial ordered.