1973
Aug. 30
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GEORGHIOS ARESTIDOU
v.
THE POLICE

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

GEORGHIOS ARESTIDOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3484).

Evidence in criminal cases—Failure of accused to give evidence in his own defence—Effect of such failure—Matter dealt with in the Vrakas ans Another *v.* The Republic (*reported in this Part at p.* 139, ante).

Accused—Failure to give evidence—See supra.

Further or Fresh evidence on appeal—Power of the Court of Appeal to receive further evidence—Principles applicable—Section 25(3) *of the Courts of Justice Law,* 1960 (*Law,* 14/1960) *and section* 146 *of the Criminal Procedure Law, Cap.* 155—*Evidence sought to be adduced—Not credible in the sense of being well capable of belief—Available to the defence during the trial—Too vague and incapable of having any important effect on the outcome of the case—Application refused.*

The facts sufficiently appear in the judgment of the Court refusing leave to adduce further evidence and, eventually, dismissing this appeal by the Appellant against his conviction on a charge of obtaining money by false pretences contrary to sections 297 and 298 of the Criminal Code Cap. 154.

Cases referred to:

Simadhiakos v. *The Police,* 1961 C.L.R. 64;
Kolias v. *The Police* (1963) 1 C.L.R. 52;
Pourikkos (*No.* 2) v. *Fevzi,* 1962 C.L.R. 283;
Felekkis v. *The Police* (1968) 2 C.L.R. 151;
Petri v. *The Police* (1968) 2 C.L.R. 40;
Ladd v. *Marshall* [1954] 3 All E.R. 745, at p. 748;
Roe v. *McGregor and Sons* [1968] 2 All E.R. 636;
Cowling v. *Matbro Ltd* [1969] 2 All E.R. 664;
R. v. *Parks* [1961] 3 All E.R. 633;

R. v. *Schofield,* 12 Cr. App. R. 191;
Skone v. *Skone and Another* [1971] 2 All E.R. 582;
Piotrowska v. *Piotrowski* [1958] 2 All E.R. 729;
Vrakas and Another v. *The Republic* (reported in this Part at p. 139, *ante*).

Appeal against conviction.

Appeal against conviction by Georghios Arestidou who was convicted on the 27th June, 1973 at the District Court of Limassol (Criminal Case No. 14762/72) on one count of the offence of obtaining money by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154 and was sentenced by Chrysostomis, D.J. to four months' imprisonment and he was further ordered to pay £10.– compensation to the complainant.

S. Papakyriacou with *C. Tsirides*, for the Appellant.

Cl. Antoniades, 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 obtaining money, £10, by false pretences; the false pretences were that he pretended to the complainant, Avgerinos Georghiou of Limassol, that as an employee in the private office at Paphos of the Minister of Interior he could intercede with him in order to put an end to criminal proceedings against the complainant in relation to a charge of carrying a firearm.

The Appellant was sentenced to four months' imprisonment, as from the 27th June, 1973, but he has not appealed against such sentence.

The Appellant is a policeman; it is not denied by him that he has never been in the employment of the Minister; nor did he deny that he received £10 from the complainant; but his version, as it was set out, also, in a statement which he made to the police, has been that he received the money by way of a loan.

At the commencement of the hearing of the appeal we had to deal with an application to hear further evidence on appeal. This matter is governed, in general terms, by section 25(3) of the Courts of Justice Law, 1960 (Law 14/60); furthermore, there existed even before such Law, and still continue to exist,

similar powers under section 146 of the Criminal Procedure Law, Cap. 155.

The principles relating to the exercise of our discretion in such matter have been referred to, and applied in, *inter alia*, *Simadhiakos* v. *The Police*, 1961 C.L.R. 64, *Kolias* v. *The Police* (1963) 1 C.L.R. 52, *Pourikkos* (*No.* 2) v. *Fevzi*, 1962 C.L.R. 283, *Felekkis* v. *The Police* (1968) 2 C.L.R. 151, and *Petri* v. *The Police* (1968) 2 C.L.R. 40.

Guidance may be derived, too, from the case of *R.* v. *Parks* [1961] 3 All E.R. 633, where the principles applicable in relation to the hearing of evidence on appeal, in a criminal case, under section 9 of the Criminal Appeal Act, 1907, were stated to be as follows:-

> " (i) The evidence sought to be called must be evidence which was not available at the trial; (ii) the evidence must be relevant to the issues; (iii) it must be credible evidence in the sense of being well capable of belief, and (iv) the Court will, after considering that evidence, go on to consider whether there might have been a reasonable doubt in the minds of the jury as to the guilt of the Appellant if that evidence had been given together with the other evidence at the trial".

The above approach is similarly applicable in civil cases: In *Ladd* v. *Marshall* [1954] 3 All E.R. 745 (which has been followed in, *inter alia*, *Roe* v. *McGregor & Sons* [1968] 2 All E.R. 636, *Cowling* v. *Matbro Ltd.* [1969] 2 All E.R. 664 and *Skone* v. *Skone and Another* [1971] 2 All E.R. 582) it was stated (at p. 748) that the following conditions must be fulfilled in order to render it proper to allow the hearing of evidence on appeal:-

> " ... that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible".

In the light of the foregoing, we have considered the evidence sought to be adduced before us:

Firstly, it consists of further evidence to be given by a witness who was already given evidence at the trial; she has sworn an affidavit to the effect that she did not mention before the trial Court that the Appellant received the money from the complainant by way of a loan, because she was, allegedly, told by the police that she could not say in evidence anything that was not already contained in her statement to the police; in fact, however, this witness was cross-examined as to the circumstances in which the Appellant had got the money and she stated that the complainant had told her that the Appellant had taken the money for a certain case ("διὰ μίαν ὑπόθεσιν"), and not as a loan. So, we cannot regard her further evidence, which is sought to be adduced, as credible evidence in the sense of being well capable of belief; therefore, we do not allow her to be recalled before us.

Secondly, there is testimony by the husband of the above witness; he was not called at all as a witness before the trial Court, but was mentioned during the trial; therefore, he is a witness who was available to the defence, to be called by it, if it so wished; consequently, on this ground, we disallow the calling of this witness before us.

Thirdly, there are two witnesses who were discovered by the Appellant after his conviction. They are co-prisoners of his in the Central Prisons, convicted of offences involving dishonesty, and have sworn affidavits to the effect that they had heard the complainant saying that he had the means "to place policemen behind bars by giving evidence" and they understood that one of the "policemen" was the Appellant. We consider this evidence as too vague and incapable of having any important effect on the outcome of the case; moreover, bearing in mind the nature of its source, we cannot treat it as credible evidence.

For these reasons we have decided to dismiss the application for leave to call further evidence before us.

Counsel for the Appellant has cited the case of *Piotrowska* v. *Piotrowski* [1958] 2 All E.R. 729, where a rehearing was ordered after a main witness, who was one of the parties in that case, had admitted that he had given perjured evidence at the trial. That case is obviously distinguishable from the present one and, therefore, we can see no reason to order a new trial, as suggested on behalf of the Appellant as an alternative course to the hearing of further evidence.

Coming, next, to the merits of the case, we are not prepared to hold, under section 145 (1) (b) of Cap. 155, that the conviction is unreasonable having regard to the evidence adduced, especially in view of the fact that the Appellant does not deny receiving the £10, but he only denies the circumstances in which he received them; and the trial Court has, in fact, believed the complainant's afore-mentioned version as to how the money was extracted from him by false pretences; it is to be noted, too, that the Appellant chose not to give evidence on oath, but he merely made a statement from the dock adopting the version which he had already told the police, namely that the money was given to him as a loan.

In the case of *Vrakas and Another* v. *The Republic* (Criminal Appeals Nos.3440, 3442, not reported yet*) we have had occasion to deal, on appeal, with the effect in criminal proceedings of the choice by an accused not to give evidence on oath in order to give an innocent explanation when there exists, in view of the circumstances of the case, strong *prima facie* evidence against him; and we need not repeat today what we have already stated then.

The trial Court has treated as an element against the Appellant the evidence of a witness, Pavlou, who stated that he had met the Appellant and asked him for the money which he owed to him and to the complainant; this witness, according to his evidence, had said to the Appellant: "Give me the money which Avgerinos gave you to save him from prison", and the Appellant had replied that he would pay the money to Avgerinos on the following Monday.

Counsel for Appellant has submitted that this evidence was wrongly accepted as evidence strengthening the case for the prosecution; and he cited the case of *R.* v. *Schofield,* 12 Cr. App. R. 191. That case is, in our view, clearly distinguishable because there the reply of the accused, when charged, was: "Just my luck"; and it was held by the Court of Appeal that that was an expression consistent with the disappointment of the Appellant for being charged for an offence, and was not, necessarily, an admission of having committed the offence concerned.

* Now reported in this Part at p. 139, *ante.*

In the result, we have no alternative but to dismiss this appeal. But, as it was stressed by counsel for the Appellant that his conviction will have, possibly, very adverse consequences on the career of the Appellant, as a policeman, we are not inclined to punish him more by making his sentence run from today and so we make an order that it should run from the date of his conviction.

Appeal dismissed.