

1973
Sept. 25

[TRIANTAFYLIDES, P., L. LOIZOU, MALACHTOS, JJ.]

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ANDREAS
MICHAEL
ORPHANOU
v.
THE POLICE

ANDREAS MICHAEL ORPHANOU,

Appellant.

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3459*).

Credibility of witnesses—Appeal turning on credibility of witnesses—Principles upon which the Court of Appeal will approach such appeals well settled—Conviction for criminal trespass resting on the evidence of a sole prosecution eye-witness—Nature of evidence is such that it was unsafe to be acted upon by the trial Court in convicting the Appellant—Conviction quashed.

Witnesses—Credibility of—Appeals turning on credibility of witnesses—Approach of the Court of Appeal—See further supra.

The facts of this case are set out in the judgment of the Court, allowing this appeal against conviction resting on the evidence of the sole prosecution witness, the Supreme Court holding that the nature of this evidence was such that it was unsafe to be acted upon.

Cases referred to:

Economides v. Zodiatis, 1961 C.L.R. 306, at p. 307.

Appeal against conviction.

Appeal against conviction by Andreas Michael Orphanou who was convicted on the 29th May, 1973, at the District Court of Nicosia (Criminal Case No. 29/73) on one count of the offence of criminal trespass contrary to section 280 of the Criminal Code, Cap. 154 and was sentenced by Anastassiou, Ag. D.J. to pay a fine of £20.— and he was further bound over in the sum of £100.— for one year to be of good character and behaviour.

K. Talarides, for the Appellant.

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

The judgment of the Court was delivered by:-

TRIANTAFYLIDES, P.: The Appellant has appealed against his conviction of the offence of criminal trespass, contrary to section 280 of the Criminal Code, Cap. 154.

He was convicted on the 29th May, 1973, by the District Court of Nicosia; he was sentenced to pay a fine of £20 and was bound over in the sum of £100 for one year to be of good behaviour.

The basic issue which has been raised in this case is whether the Appellant is the person who was seen in the yard of the house where the offence in question was committed; in this house there was residing at the time prosecution witness Androulla Loizou who, according to her evidence, saw the Appellant jumping over the fence of the yard and running away.

She is the only eye-witness in this case and so it is very important to be sure that her evidence could be safely relied on as establishing that the person who was seen by her in the yard and jumping over the fence was, indeed, the Appellant.

There is no doubt that the fact that immediately afterwards the Appellant was seen by the said witness in the street outside her house, as well as the fact that his explanation about his presence in the street was not fully borne out by other proved facts, create naturally a lot of suspicion against him.

Also, it is well established that this Court does not normally interfere in the matter of the credibility of a witness whose evidence has been accepted as correct by the trial Court; there must, indeed, exist good grounds to justify such interference (see, *inter alia*, *Economides v. Zodhiatis*, 1961 C.L.R. 306, at p. 307).

We have reached the conclusion, in the light of the arguments advanced in this appeal, that the nature of the evidence of the sole prosecution eye-witness is such that it was unsafe for it to be acted upon in convicting the Appellant and that it is, therefore, necessary to set aside his conviction on this ground: In forming this view we have borne in mind that there was no illumination of any kind in the yard or near the fence; there was no moon; it was simply a starlit night; and yet the said witness stated that she positively identified the Appellant during "a few seconds" while he was jumping over the fence of the

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yard in order to get away from there; moreover, she insisted that, in those circumstances, she managed to see clearly the colour and shape of his shirt (she said that it had long sleeves). In our opinion it is quite probable that she said that it was the Appellant who was seen by her in the yard because she saw him later in the street; and it was then that she noticed the colour and shape of his shirt.

In the light of the foregoing this appeal is, therefore, allowed.

Appeal allowed.