1976
Sept. 18

ATTORNEY-GENERAL OF THE REPUBLIC

v.

ANDREAS CHRISTOU MORPHITIS

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

ANDREAS CHRISTOU MORPHITIS,

Respondent.

(Criminal Appeal No. 3641).

Criminal Procedure—Trial in Criminal Cases—Finding of prima facie *case—Proper course to be taken after such finding—The one prescribed by section 74(1)(c) of the Criminal Procedure Law, Cap. 155 and not the one prescribed by s. 77(1).*

Prima facie *case—Finding of—Proper course to be taken after such finding.*

This was an appeal by the Attorney-General of the Republic against the acquittal of the respondent of the offences of stealing by an agent and of stealing.

Section 74(1)(c) of the Criminal Procedure Law, Cap. 155 reads as follows:

"(c) At the close of the case for the prosecution, if it appears to the Court that a *prima facie* case is made out against the accused sufficiently to require him to make a defence, the Court shall call upon him for his defence....".

The trial judge in reaching his decision took a correct view of the notion of *prima facie* case, referring, in particular, to the case of *Rex* v. *Kara Mehmed*, 16 C.L.R. 46; he, then, proceeded to summarize the facts of the case, as they emerged from the evidence of the prosecution witnesses; and at that stage of his decision he observed: "There is no doubt that so far there is sufficient evidence to support a *prima facie* case". After stating this, he proceeded to examine further the evidence before him, in the light of relevant legal considerations, and he reached the conclusion that the guilt of the respondent in respect of the offences with which

he had been charged had not been actually established.

Held, (1) The proper course to be taken by the judge, at that stage, was that prescribed by s. 74(1)(c) of the Criminal Procedure Law, Cap. 155.

(2) So, once the trial judge had found that a *prima facie* case had been made out sufficiently, he was bound to call upon the respondent to make his defence, without proceeding to reach a decision as to conviction or acquittal until after the whole of the evidence in the case had been placed before him.

(3) Instead, the judge went beyond what he was empowered to do at that stage and examined whether or not the commission by the respondent of the offences concerned had been actually established; in other words, he acted in the manner envisaged by section 77(1) of Cap. 155 (*supra*); and he could only have done so at the conclusion of the trial, and not at that premature stage of it, namely at the close of the case of the prosecution.

(4) In the light of the foregoing, and bearing in mind section 145(3)(a)(ii) of Cap. 155, we have decided to set aside the acquittal of the respondent and to order a re-trial of this case before another judge (see, *inter alia*, *Attorney-General of the Republic* v. *Petrou* (1972) 2 C.L.R. 81).

Appeal allowed.

Cases referred to:

Rex v. *Mustafa Kara Mehmed*, 16 C.L.R. 46;

Attorney-General of the Republic v. *Petrou* (1972) 2 C.L.R. 81.

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the decision of the District Court of Limassol (S. Demetriou, S.D.J.) given on the 11th July, 1975 (Criminal Case No. 8108/75) whereby the respondent was acquitted of the offences of stealing by agent, contrary to sections 255 and 270(b) of the Criminal Code, Cap. 154 and of

stealing contrary to sections 255 and 262 of the Criminal Code, Cap. 154.

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

A. Skordis, for the respondent.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : The Attorney-General of the Republic has appealed against a decision of the District Court of Limassol by which the respondent—(an accused person before the District Court)—was acquitted of the offences of stealing by an agent, contrary to sections 255 and 270(b) of the Criminal Code, Cap. 154, and of stealing, contrary to sections 255 and 262 of Cap. 154.

The respondent was acquitted at the end of the close of the case for the prosecution, because the trial Court upheld a submission of his counsel that the respondent should not be called upon to defend himself as no *prima facie* case had been made out against him.

As it appears from the record before us, the trial judge in reaching his decision took a correct view of the notion of a *prima facie* case, referring, in particular, to the case of *Rex* v. *Mustafa Kara Mehmed,* 16 C.L.R. 46; he, then, proceeded to summarize the facts of the case, as they emerged from the evidence of the prosecution witnesses, as follows :-

> "The accused at the material time was the agent in Nicosia of a Company called 'Pattihis Himiki Eteria Ltd.' manufacturing aerrosol, cosmetics etc. The accused undertook to sell for the company such goods on consignment as described by the managing director P.W.2. The accused was to receive commission on such sales and deposit the balance of the sale price after deducting the commission in the account of the company. The terms of such agreement were embodied in a contract between them copy of which was produced and marked *exhibit* 1.
>
> P.W.2 proceeded on to say that after three checks were made by their accountant a deficit was found and their relationship was thereupon terminated."

At that stage of his decision the trial judge observed: "There is no doubt that so far there is sufficient evidence to support a *prima facie* case". After stating this, he proceeded to examine further the evidence before him, in the light of relevant legal considerations, and he reached the conclusion that the guilt of the respondent in respect of the offences with which he had been charged had not been actually established.

We are of the opinion that the proper course to be taken by the judge, at that stage, was that prescribed by section 74(1)(c) of the Criminal Procedure Law, Cap. 155, which reads as follows:-

> "(c) At the close of the case of the prosecution, if it appears to the Court that a *prima facie* case is made out against the accused sufficiently to require him to make a defence, the Court shall call upon him for his defence and shall inform him that he may make a statement, without being sworn, from the place where he then is, in which case he will not be liable to cross-examination or give evidence in the witness box, after being sworn as a witness, in which case he will be liable to cross-examination as a witness;"

So, once the trial judge had found that a *prima facie* case had been made out sufficiently, he was bound to call upon the respondent to make his defence, without proceeding to reach a decision as to conviction or acquittal until after the whole of the evidence in the case had been placed before him; instead, the judge went beyond what he was empowered to do at that stage and examined whether or not the commission by the respondent of the offences concerned had been actually established; in other words, he acted in the manner envisaged by section 77(1) of Cap. 155; and he could only have done so at the conclusion of the trial, and not at that premature stage of it, namely at the close of the case of the prosecution.

In the light of the foregoing, and bearing in mind section 145(3)(a)(ii) of Cap. 155, we have decided to set aside the acquittal of the respondent and to order a re-

trial of this case before another judge (see, *inter alia*, *Attorney-General of the Republic* v. *Petrou*, (1972) 2 C.L.R. 81).

This appeal is, therefore, allowed accordingly.

Appeal allowed.