

1977

March 8

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GEORGHIOS
COSTI
KARAMANIS
v.
THE POLICE

[L. LOIZOU, HADJIANASTASSIOU AND MALACHTOS, JJ.]

GEORGHIOS COSTI KARAMANIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3775*).

Findings of fact—Appeal turning on findings of fact based on credibility of witnesses—Court of Appeal will not interfere with such findings unless there are good grounds justifying such a course—Appeal against conviction for indecent assault on a female—Complainant’s version accepted by trial Court—Accused’s evidence not believed— Court of Appeal far from convinced that this is a case in which it could interfere with the conviction—Appeal dismissed. 5

The appellant was convicted of the offence of indecent assault on a female, contrary to sections 151 and 35 of the Criminal Code, Cap. 154 and was sentenced to nine months’ imprisonment. 10

The trial Judge accepted the version of the prosecution and believed the evidence of the complainant who impressed him as very truthful witness to the extent that he could be prepared to act upon her evidence even if there was no corroboration. On the other hand the accused made a very bad impression to the Judge and he did not believe his evidence. 15

The accused appealed against conviction. The sole ground on which the appeal was argued related to the question of credibility of the witnesses and the findings of the trial Court based thereon. Counsel submitted in this connection that there were reasons which did not justify the findings of the trial Judge that the version of the prosecution should be believed and he has particularly stressed the place where the offence was committed, the condition of the complainant and her reaction at the time of the offence. 20 25

Held, dismissing the appeal, that the matter turns on a question of credibility and as stated by this Court time and again unless there are good grounds justifying such course it will not interfere with findings of fact based on the credibility of witnesses; that 30

having heard counsel today this Court is far from convinced that this is a case in which it could interfere with the conviction and the appeal will, accordingly, be dismissed.

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Appeal dismissed.

5 **Appeal against conviction.**

Appeal against conviction by Georghios Costi Karamanis who was convicted on the 20th December, 1976 at the District Court of Nicosia (Criminal Case No. 26021/76) on one count of the offence of indecent assault on a female, contrary to sections 10 151 and 35 of the Criminal Code, Cap. 154 and was sentenced by Boyadjis, S.D.J. to nine months' imprisonment.

M. Christofides, for the appellant.

V. Aristodemou, Counsel of the Republic, for the respondents.

15 The judgment of the Court was delivered by:—

L. LOIZOU, J.: The appellant appeals against his conviction by the District Court of Nicosia for the offence of indecent assault on a female contrary to sections 151 and 35 of the Criminal Code, Cap. 154. The offence is alleged to have 20 been committed on the 31st July, 1976, shortly before noon. The trial Court found the appellant guilty of the offence and sentenced him to nine months' imprisonment. He has filed an appeal from the prisons without the assistance of counsel in which the sole ground given is that "I am innocent."

25 Today learned counsel for the appellant, who appears for him at the request of the Court, has stressed to us that this is an appeal against conviction only and not against sentence and he has quite fairly stated that the sole ground he can argue relates to the question of credibility of the witnesses and the findings 30 of the trial Court based thereon and he has submitted that there are reasons which do not justify the findings of the trial Judge that the version of the prosecution should be believed and he has particularly stressed the place where the offence was committed, the condition of the complainant and her reaction 35 at the time of the offence. It is not, according to learned counsel's argument, reasonable to believe that the appellant would commit an offence of this nature in a hospital ward with an open door leading to the corridor even though the complainant's bed was not visible from the corridor nor was it

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natural for the complainant to keep quiet and not scream while the offence was being committed.

The complainant is approximately 24 years of age and she is mentally retarded falling within the category of mild mental retardation or morosity with an I.Q. of 58 out of the normal ranging between 95 and 109, but that this is an underestimate of her intelligence because of lack of cultural and educational experience. In addition to the above the complainant, always according to the medical evidence, presents spasticity of the lower extremities and she cannot walk as a result and she has a certain degree of social and emotional inadequacy. She also suffers from dysarthria, which, as well as her inability to move her legs are due to cerebral paralysis but her condition is stable. The medical evidence was given by Dr. Andreas Georghiades, a principal clinical psychologist in the Ministry of Health who was called by the defence; he has further stated that the complainant can very successfully render facts that took place and describe details about them and that she was, if she wanted, in a position to fabricate a story; her dysarthria, he said, did not prevent her from screaming.

Coming now to the appellant. He is, according to the evidence, a widower 57 years of age, he comes from Politico village where he lives with his daughter, an unmarried girl of 20 and is employed in Nicosia as a labourer.

On the date of the commission of this offence the complainant was an inmate in the psychiatric wing of the Nicosia General Hospital and in view of her condition she was lying in bed. In the same ward there were four or five other women but at the time of the commission of the offence all of them except a very old woman who, according to the evidence, was not, in view of her condition, in a position to appreciate what was going on around her, were in the T.V. room of the ward.

The version of the prosecution is that whilst the complainant was in bed and there was a nurse in the ward the accused went to the ward and asked some information regarding a certain woman from Ormidhia by the name of Varvara. The nurse told him to go and wait in the T.V. room as it was not allowed for visitors to roam about in the wards and that she would see to it that the patient he was looking for was taken to him and thereupon the appellant left the ward. When the nurse who is P.W.2, Kyriaki Georghiou, finished she went out of the ward

into the next ward where there was in fact a patient by the name of Varvara, she got this patient ready and assisted her out and into the T.V. room so that the appellant might see her but the appellant had already left.

5 The complainant has stated in evidence that after the nurse left the ward the appellant went there again, he approached her, he kissed her, he took hold of her breasts and also lifted her nightgown and touched her private parts. This girl had a very unfortunate experience with her father who had sexually attacked
10 her in the past and used to beat her up when she shouted. She did not react in any way, she said to what the appellant did to her but she kept silent and did nothing because of fear that he might also beat her.

15 The appellant on his part does not deny that he entered the psychiatric wing of the hospital nor does he deny that he went to that very ward where the complainant was lying but his version is that when he went there he only saw the complainant, he tried to get information from her regarding the patient he was looking for but he could not understand her and he left.

20 Soon after the alleged indecent assault the complainant spoke to the nurse and it would appear to some other women who were patients there, she explained to the nurse what the appellant had done to her and described him. The appellant was traced by this nurse sitting on a bench outside the hospital wing and
25 the nurse asked him to go back to the ward with her which he did very reluctantly and the complainant saw him and identified him there and then as the person who had indecently assaulted her. Thereafter the police were called and the appellant made a statement *exhibit 1* in which he describes how he happened to
30 meet a woman from Ormidhia by the name of Varvara about two days earlier and how he undertook to assist her being admitted to the hospital and that she told him that she would be at the hospital on the 30th of the month i.e. a day before this offence was committed.

35 Be that as it may, the trial Judge who heard the evidence and saw the witnesses had no hesitation whatsoever in accepting the version of the prosecution. The complainant impressed him as a very truthful witness to the extent that he would be prepared to act upon her evidence even if there was no corroboration.
40 On the other hand the accused made a very bad impression to the Judge and he did not believe his evidence. So really the

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matter turns on a question of credibility. This Court has stated time and again that unless there are good grounds justifying such course it will not interfere with findings of fact based on the credibility of the witnesses.

Having heard counsel today we are far from convinced that this is a case in which this Court could interfere with the conviction and the appeal is, therefore, dismissed.

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Appeal dismissed.