1978 July 1

[STAVRINIDES, HADJIANASTASSIOU, MALACHTOS, JJ.]

KYRIACOS SOLOMOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 3760).

Evidence—Confessions by accused to police—Admissibility—Voluntariness—Test to be applied.

Criminal Law—Incest—Section 147 *of the Criminal Code, Cap.* 154—*Submission as distinct from consent—Whether corroboration necessary—Conviction on two counts—Conviction on first count based on uncorroborated evidence of complainant, a spastic with I.Q. below average—Unsafe—Set aside—Overwhelming circumstantial evidence regarding count* 2—*Conviction sustained.*

Criminal Law—Sentence—Insest—Seven years' imprisonment—No remorse shown by appellant—Sentence upheld.

The appellant was tried and convicted on two counts of the offence of incest and was sentenced to consecutive sentences of seven years' imprisonment on each count. On the first count he was charged that between 1973 and the 25th July, 1976, he had carnal knowledge of his daughter Chryssi, aged 20, and on the second count he was charged that on the 27th July, 1976, he again had carnal knowledge of the same person. The only witness who testified regarding the offence charged on the first count was the complainant and her sister. The complainant alleged that within a year before the Turkish invasion, on one day at about noon, as she was sitting underneath a lemon tree making stools, her father took her to the toilet where he had sexual intercourse with her, contrary to her will. Her sister testified that she heard cries of the complainant coming from the toilet and that she saw the appellant coming out of the toilet and the complainant following him. Both sisters were spastic and the I.Q. of the complainant, being 58, was below average.

Regarding the offence charged in the second count, in addition to the evidence of the complainant, there was circumstantial evidence which consisted mainly of the haemorrhage suffered by the complainant soon after the offence, of the finding of bite impressions on the right arm of the complainant, which were made by the teeth of the appellant and of the finding of blood stains on the underpants of the appellant; there were, also, confessions from the appellant admitting commission of the offence.

The trial Court reached the conclusion that in both incidents there was a submission, as distinct from consent, and no corroboration was necessary; but that in so far as the second count was concerned there was ample corroboration. With regard to the confessions the trial Court, after a side trial, ruled that they were free and voluntary and they were admissible in evidence.

Upon appeal against conviction and sentence counsel for the appellant contended:

(a) That the trial Court wrongly ruled that the confessions were admissible in evidence and that they were made free and voluntary.

(b) That there was insufficient evidence before the trial Court to find the appellant guilty of incest on both counts, especially as, with regard to count 1, it relied on the evidence of the complainant alone and wrongly decided that the evidence of her sister could in any way be considered as corroborating the version of the complainant.

(c) That the sentence was manifestly excessive.

Held, (1) that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement; that if an objection is made to the admission of evidence as to a statement made by an accused it will be for the Judge to decide as to its admissibility; that voluntary statement means a voluntary statement in the sense that it had not been obtained either by fear or prejudice or hope of advantage, the fear being exercised by or hope being held out by someone who is a person in authority. (See the test enunciated by Lord Sumner in *Ibrahim* v. *R.* [1914–15] All E.R. Rep. 874 and *D.P.P.* v. *Ping Lin* [1975] 3 All E.R. 175 H.L.).

(2) That the trial Court rightly have approached their task by applying the test enunciated by Lord Sumner in *Ibrahim* v. *R.* (*supra*) when it asked itself this question "have the prosecution proved that the contested statements were voluntary in the sense that they were not obtained by fear of prejudice or hope of advantage caused or held out by a person in authority or by oppression"; that looking at it in this way and looking at the whole of the evidence in its context as the trial Court have outlined it, this Court holds that the trial Court was entitled to find that the appellant's two statements were voluntary, in the sense that the prosecution has proved, and proved beyond reasonable doubt in the classical words of Lord Sumner that they have not been obtained from him either by fear or prejudice or hope of advantage exercised or held out by a person in authority.

(3) That this Court finds itself in agreement with the trial Court that the circumstantial evidence against the appellant was overwhelming with regard to count 2; and that, accordingly, the decision of the trial Court on this count will be affirmed.

(4) That though the trial Court had believed the evidence of the complainant it was not safe on the particular facts of this case to find the appellant guilty on count 1 (See *Hjisavva alias Koutras* v. *The Republic* (1976) 2 J.S.C. 302 and *Kouppis* v. *The Republic* (1977) 11 J.S.C. 1860 at p. 1900); and that, accordingly, the appeal on count 1 will be allowed and the sentence passed thereon will be quashed.

(5) That having considered the whole behaviour of the appellant, who up to the end showed no remorse but tried to throw the blame on some one else, this Court thinks that the sentence of seven years' imprisonment on count 2 is not a sentence which requires intervention by this Court in the particular circumstances of this case; and that the appeal against the sentence passed on this count will be dismissed.

Appeal partly allowed.

Cases referred to:

R. v. *Dimes*, 7 Cr. App. R. 43;

R. v. *Scott* [1856] Dears & B. 47;

R. v. *Isequilla* [1975] 1 All E.R. 77 at p. 82;

D.P.P. v. *Ping Lin* [1975] 3 All E.R. 175;

Hjisavva alias Koutras v. *The Republic* (1976) 2 J.S.C. 302 (to be reported in (1976) 2 C.L.R.);

Kouppis v. *The Republic* (1977) 11 J.S.C. 1860 at p. 1900 (to be reported in (1977) 2 C.L.R.).

Appeal against conviction and sentence. 5

Appeal against conviction and sentence by Kyriacos Solomou who was convicted on the 20th October, 1976, at the Assize Court of Nicosia (Criminal Case No. 23163/76) on two counts of the offence of incest contrary to section 147 of the Criminal Code, Cap. 154 and was sentenced by Stavrinakis P.D.C. 10 Orphanides, S.D.J. and Laoutas, D.J. to seven years' inprisonment on each count, the sentences to run consecutively.

A. Eftychiou, for the appellant.

A. Angelides, Counsel of the Republic, for the respondent.

Cur. adv. vult. 15

STAVRINIDES J.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: On 20th October, 1976, at the Nicosia Assize Court, the appellant was convicted on two counts of having carnal knowledge of his daughter, Chryssi, aged 20, 20 contrary to section 147 of the Criminal Code Cap. 154, and was sentenced to seven years' imprisonment on each count, but both sentences not to run concurrently. He now appeals against both his conviction and sentence.

The facts can be put very shortly and are somewhat excep- 25 tional. The appellant was married and was living with his wife and children within the area of "SOPAZ" factory in Nicosia, one year before the invasion of Cyprus by the Turkish troops. The complainant, Chrysi Solomou, was one out of four spastic children. She had attended a school and was taught to make 30 stools in order to occupy her time and to make herself useful in the society.

According to the prosecution, on an unknown date between 1973 and 25th July, 1976, when she was sitting under a lemon tree making stools, the appellant, apparently for the first time, 35 as the complainant claimed, took her to the toilet of the house in question, and whilst there he had sexual intercourse with her against her will. When coming out of the toilet unassisted,

she was seen by her sister Xenia—another spastic, but no complaint was made to her.

The case for the prosecution was that the sister of the complainant, Xenia, noticed that the chair on which the latter had been sitting earlier, was overturned, and although the witness heard the cries of the complainant whilst she was in the toilet, nevertheless, she did not suspect anything and she did not inquire why her sister was crying. She added, however, that after a while, when she went into the kitchen, she saw the appellant coming out of the toilet following the complainant, who was looking sullen.

A long time had passed after that incident, and as we said earlier, no complaint was made; but after the invasion of the Turkish troops, the whole family left that place and moved to the refugee camp of "Stavros" at Strovolos.

Turning now to the facts relating to count 2, it appears that in the evening of 27th July, 1976, at a time when the mother of the complainant with some members of the family were working at the coffee shop, the appellant remained at the tent in which both the complainant and Xenia were lying in separate beds. The appellant having remained there for a short while, left and returned again soon after. He switched the lights off and having removed his trousers, he lay on the bed of his daughter. Within a short period, he removed his trousers,and acting like an animal had again, as the prosecution claimed, sexual intercourse with his spastic daughter, contrary to her will. It is true that there was no evidence that the unfortunate creature tried to resist or put up a fight, even after the beast had bitten his victim on her right arm in order to satisfy his lust upon his own daughter; the reason for her attitude being, apparently, fear.

Fortunately, this incident came to be known because the vagina of the victim was bleeding profusely, and the unfortunate girl was trying desperately all night, using pieces of rags and other clothing, to stop the bleeding. In the morning she was feeling not only exhausted, but in a very bad state, and her mother found her lying in a pool of blood. A complaint was made to her mother as to what had happened, and the matter was reported to the police, and finally the girl was removed to the hospital for treatment. The police started investigations

immediately and seized all the clothing which was soaked with blood; and also discovered a pair of underpants belonging to the appellant, which was again full of blood stains, hidden underneath the mattress of his bed.

At the hospital, doctor Zachariou noticed that the complainant had a bruise on her right upper arm, and because he suspected that it was due to biting—showing impressions of teeth marks—he referred the matter to the dentist, Mr. Papasavvas. The latter instructed the police to photograph the arm of the complainant, and having examined the appellant's teeth and compared them with the photograph, he reached the conclusion that the teeth of the appellant coincided with the impressions found on the complainant's arm.

Dr. Vassiliki Panayiotou, a gynaecologist, examined the complainant also on the 28th July, 1976, and found that there was an old rupture of the hymen, but she could not specify the time when it had first been ruptured. She also found a recent rupture of the remnant of the hymen and that rupture was at about three o'clock. The doctor explained that because the patient was bleeding profusely, in any event that rupture could not have been caused more than 40 hours before her examination. Later on she added that it was more probable that it was caused within 24 hours prior to the examination. Finally, she said that she had reached that conclusion not only on account of the bleeding, but also she could diagnose it from the surface of the hymen.

In the meantime, this case had been reported at about 11.30 a.m. to P.S. Gallos, a member of the C.I.D., by the mother of the complainant. He immediately started inquiries and had seen also the complainant—still in bed covered in blood, who made to him a complaint and told him who was the person who had sexual intercourse with her against her will. On the same day, at about 3.15 p.m., the appellant was arrested on the strength of a judicial warrant whilst he was at the place of his work at "SOPAZ". The warrant of arrest was shown to him and the police explained the reasons for his arrest and cautioned him. His reply was "I did not do such a thing". After that statement, he was taken in custody to Ayios Dhometios police station, where he was detained. The appellant was searched at the police station and in one of the pockets of his trousers, a

square handkerchief was found with traces of blood. He was cautioned once again and when asked what was the origin of the blood stains on that handkerchief, the appellant's reply was that the blood was due to using it because his nose started
5 bleeding the day before. The appellant was then taken with his consent for a medical examination at the General Hospital, where blood samples were taken from him.

On 29th July, 1976, at abou. 10.00 a.m. the appellant was taken before a Judge of the District Court for a remand order
10 for eight days, but although the order was granted, no complaint of any kind was made by the appellant to the Court. On the 31st July, 1976, at about 8.00 a.m., the appellant was taken from the police station of Ayios Dhometios to the Nicosia General Hospital for examination. When the examination was
15 over and when the appellant was taken back to the police station in the presence of P.S. Gallos and P.C. Paphitis, he made this statement: "Listen, I want to tell you the whole story about the disgraceful thing which I have done to my daughter". Then P. S. Gallos immediately cautioned him, he
20 explained to him his rights, and the appellant continued saying: "I want you to take a statement from me to tell you how 'epiraxa tin korin mou ke tin atimasa'". In view of that statement, the appellant was taken to the Paphos Gate Police Station—having expressed his intention to make a voluntary statement—and
25 whilst at the station, a voluntary statement was taken down.

During the trial, counsel for the defendant objected to the production of that statement as not being a voluntary one, and alleged that it was taken as a result of brutal ill-treatment in one of the offices of the C.I.D. of the Nicosia Police Station by
30 P.C. 409, P.C. 221 and three other persons, unknown to the appellant, dressed in mufti. Counsel further claimed that the ill-treatment occurred on 31st July, 1976 at about noon. He further complained that one of the police officers started hitting his client with a piece of wood under his feet and at the same
35 time other officers were hitting him in the abdomen and on other parts of his body for 45 minutes. Then counsel forcibly argued that the defendant was forced to give that statement as a result of that brutal ill-treatment.

Having heard both the version of the prosecution and the
40 appellant, in a side trial, the trial court reached the conclusion

that the prosecution proved affirmatively, and beyond any reasonable doubt that the statement was free and voluntary and had not been extracted by ill-treatment.

On 2nd August, 1976, the appellant was formally charged, and although in reply he denied that he had sexual intercourse with his daughter before 1976 he admitted that he did so once on 27th July, 1976, but he said that he was drunk and that he did not know what he was doing. During the trial, counsel for the defence once again objected to the production of the formal charge, alleging that the defendant did not sign or put his signature on any such document, and that he did not give any answer to the formal charge. The trial Court once again directed a side trial as to the genuineness of that document and as to whether the appellant had signed it or placed his thumb mark on it. Having heard evidence on behalf of the prosecution, the investigating officers P. S. Gallos and P. C. Neophytou, as well as Inspector Christoforos Georghiou—a finger-print and photography expert, and also the evidence of the appellant, the Court reached the conclusion that the evidence given remained unshaken and uncontradicted, and it ruled that the document in question was admissible in evidence.

The appellant, having elected to give evidence on oath, denied that he had had any intercourse with his daughter, and put forward the allegation that he was suffering from a hydrocele which interfered with his sexual activities. What is surprising, however, even at that stage of the trial, is that he did not allege that he was rendered impotent, but only that it caused him difficulties in the performance of his conjugal duties, and that his sexual performance was reduced.

The Court, having weighed properly the whole evidence before it, and fully aware that the I.Q. of the complainant was below average—being 58—reached the unreserved conclusion that her evidence not only was true and correct, but that it was also free from exaggerations. The Court further observed that in spite of her limited vocabulary and simplicity, she had managed to describe in her own words very clearly and very eloquently her nightmarish experience with her father, fully aware of the immoral and revolting nature of the act. Then having properly addressed its mind to a rule that in all cases of sexual offences the court should look for independent evidence

corroborating the evidence of the complainant if she had consented to the act, the Court dealt also with the principle formulated in *R.* v. *Dimes*, 7 Cr. App. Rep. 43. In that case it was laid down that mere submission, as distinguished from
5 permission, is insufficient to constitute the female an accomplice.

Hamilton J., delivering the judgment of the Court of Criminal Appeal in a case of incest, said at pp. 46–47:-

> " It was open to the jury to believe that she offered some
> 10 resistance and eventually submitted, without consenting in the sense of acting of her own free will. There is a distinction between submission and permission. The amount of corroboration required in cases of this sort depends on the degree of complicity of the woman. If the jury had
> 15 found that she consented, she would of course have been an accomplice. But there is no finding to this effect, nor are we at liberty to infer from the findings that she did in fact consent".

With that principle in mind, and having regard to all the
20 evidence before it, the Court reached the conclusion that in both incidents there was a submission as distinct from consent and no corroboration was necessary; but the Court went even further and said that at least with regard to the second time there was ample corroboration.

25 Finally, the trial Court, having analysed the circumstantial evidence with regard to both counts, because it believed the evidence of the complainant—having observed that the appellant was a totally untruthful person—had this to say:-

> " It is unusual to find so much circumstantial evidence
> 30 which is so strong that a conviction can be based on it alone, even if there was complete absence of the evidence of the complainant and of the confessions of the accused. In cases of this nature, the best that the prosecution can hope for is a credible story for the complainant, corrobo-
> 35 rated with other evidence or even a confession. But to have circumstancial evidence sufficiently strong to warrant a conviction even in the absence of the evidence of the complainant and of any confessions of the accused is, to our mind, something unusual and, therefore, to have all

three, that is, evidence of the complainant, circumstantial evidence and confession, is indeed something extraordinary."

On appeal, the principal point argued on behalf of the appellant appears to have been that the trial Court wrongly ruled that confessions were admissible in evidence and that they were made free and voluntary. There was also a general submission that taken as a whole, the evidence against the appellant was insufficient to justify a conviction.

As we have said, the trial Court came to the conclusion that the confessions were admissible for the reasons given at length. In our view, this is a case which, simple though it may be, we consider it our duty to deal with the early development of the law in regard to the admission of confessions. It has been accepted from the earliest time, both in common law and common sense, that although a confession may be the most valuable of evidence to establish guilt, if it is made voluntarily, a confession which is not made voluntarily but which is induced by pressures or other influences may be and often is thoroughly unreliable. It is for that reason that from the earliest days, the common law has recognised that evidence of certain confessions is not admissible as a matter of law. The principle on which the exclusion of such confessions is based, was stated by Lord Campbell C.J. in *R. v. Scott*, [1856] Dears & B., 47 in these terms:-

"It is a trite maxim that the confession of a crime, to be admissible against the party confessing must be voluntary; but this only means that it shall not be induced by improper threats or promises, because, under such circumstances, the party may have been influenced to say what is not true, and the supposed confession cannot be safely acted upon".

We cite that as one of the many indications that the rule is formulated as being one whereby the confession is excluded if it may have been induced by improper threats or promises.

In *R.* v. *Isequilla*, [1975] 1 All E.R., 77, Lord Widgery C.J., dealing with the admissibility of confessions and the conduct of the person in authority, in dismissing the appeal had this to say at p. 82:-

"(Counsel says) that has no part in the argument, and he

asserts that in the circumstances he postulates it is possible to say a resultant confession is not voluntary and that we should give effect to that principle. We are not able to accept that submission. In the first place, we accept what
5 counsel for the Crown has said, which to some extent has been made out by the reference to authority included in this judgment, that under the existing law, the exclusion of a confession as a matter of law because it is not voluntary, is always related to some conduct on the part of
10 authority which is improper or unjustified. Included in the phrase "improper or unjustified" of course, must be the offering of any inducement, because it is improper in this context for those in authority to try to induce the suspect to make a confession. Counsel for the Crown says,
15 and we agree, that if one looks to the authorities, there is no case in the books which indicates that a confession can be regarded as not voluntary by reason of the present grounds, unless there is some element of impropriety on the part of those in authority. That seems to be the case,
20 and we can see no justification for extending the principle today.

In *Director of Public Prosecutions* v. *Ping Lin*, [1975] 3 All E.R. 175, H.L., the dictum of Lord Wi gery was disapproved. It was held:-

25 "Where an objection was raised in criminal proceedings to the admission of an alleged confession by the accused, the onus was on the prosecution to satisfy the Judge beyond reasonable doubt that the statement in question had been made voluntarily by showing that it had not been obtained
30 either by fear of prejudice or hope of advantage excited or held out by a person in authority. The Judge had to determine the issue as one of fact and causation, *i.e.* whether the Crown had proved that the statement had not been made as a result of something said or done by a person
35 in authority. The Judge had to determine the issue as one of fact and causation. *i.e.* whether the Crown had proved that the statement had not been made as a result of something said or done by a person in authority. It was not sufficient for the Crown to show that the person
40 in authority had not intended to extract a confession or that there had been no impropriety on his part; what was

necessary was to show, as a matter of fact, that the statement in question had not been obtained in consequence of something said or done by him which amounted to an express or implicit threat or promise to the accused...; dicta of Cave J. in *R.* v. *Thompson* [1891–4] All E.R. Rep. at 378 and of Lord Sumner in *Ibrahim* v. *R.* [1914–15] All E.R. Rep. at 877 applied;... 5

(ii) On appeal against a Judge's decision to admit a confession as having been made voluntarily, the Court should not disturb the judge's findings merely because of difficulties in reconciling them with different findings of fact, on apparently similar evidence, in other reported cases, but should only do so if satisfied that the Judge has made a completely wrong assessment of the evidence or had failed to apply the correct principle. In all the circumstances of the instant case, and particularly in view of the fact that the appellant had made his confession to retail trading before any possible inducement had been made to him, it could not be said that the judge had erred in principle and the appeal would therefore be dismissed." 10 15 20

Lord Morris of Borth–Y–Gest, delivering his own speech in the House of Lords, said at p. 177:-

" My Lords, in the judgment of the Privy Council (delivered by Lord Sumner) in *Ibrahim* v. *R.* [1914–15] All E.R. Rep. 874 at 877), it was said that it had long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement. If an objection is made to the admission of evidence as to a statement made by an accused it will be for the Judge to decide as to its admissibility. He will generally in the absence of the jury, have to hear the testimony of witnesses in regard to the impugned evidence and in regard to the relevant surrounding circumstances. He will then decide whether the prosecution have shown that the statement was a voluntary statement. Lord Sumner explained or illustrated what he meant by a voluntary statement. He meant a voluntary statement 'in the sense' that it had not been obtained either by fear of prejudice or hope of advantage, the fear being as he put it 'exercised' 25 30 35 40

by or the hope being 'held out' by someone whom be described as a person in authority. No occasion arises in the present case to consider the meaning or the significance of the phrase 'person in authority'. The police officers in
5 the present case were clearly within the designation of persons whom Lord Sumner had in mind.

The guidance given by Lord Sumner's words is in my view clear. From them the sense and the spirit of the rule can be readily comprehended. Particular words are
10 merely the instruments chosen to convey meaning. For this purpose words are but servants. If by their use a clear meaning has been conveyed then their purpose has been achieved.

In the circumstances posed a Judge must decide whether
15 the prosecution have shown that a statement was voluntary. His decision will generally be one of fact. He may perhaps in some cases before giving his decision derive help from a consideration or perusal of reported decisions but he will always remember that most of these reported decisions
20 merely record what the ruling of another judge has been in another case and in the particular circumstances of that case and on the basis of its own particular facts. He will always remember also that considerations of space may often make it difficult to record in a report all the relevant
25 circumstances and facts. A Judge will often have to rule at times and in places which do not readily make it possible to consult copious authorities. This will be no disadvantage. What is a clear and straightforward rule need not be obscured by subtleties and complications. The rule is
30 one which in a fair-minded way can readily be applied by a Judge once he has clearly ascertained the facts.

The task of the Judge will be to apply the spirit and intendment of the rule. Without being anchored to any particular words he will consider whether the statement of
35 an accused was brought about by some hope or fear held out or caused by someone who could be classed as a person in authority. The Judge will be ruling on admissibility and not (primarily at all events) on any question as to the propriety of the conduct of someone who conducted an
40 interview or asked questions or as to the propriety or

impropriety of something said or done. The Judge will be ascertaining the facts as to what was said in an interview and not (primarily at all events) enquiring as to the motives or intentions of the person or persons who conducted an interview. 5

In my view it is not necessary, before a statement is held to be inadmissible because not shown to have been voluntary, that it should be thought or held that there was impropriety in the conduct of the person to whom the statement was made. Whether there was or whether there 10 was not, what has to be considered is whether a statement is shown to have been voluntary rather than one brought about in one of the ways referred to. To this extent I would with respect diverge from what was said in *R.* v. *Isequilla* [1975] 1 All E.R. 77 at 82) though I consider that 15 the decision in that case was entirely correct."

Directing ourselves with those weighty judicial pronouncements, we think that the trial Court, in dealing with both confessions, rightly have approached their task by applying the test enunciated by Lord Sumner to all the facts in the case. 20 In fact, as we have said earlier, the Court asked itself this question "Have the prosecution proved that the contested statements were voluntary in the sense that it was not obtained by fear of prejudice or hope of advantage caused or held out by a person in authority or by oppression?" Looking at it in this 25 way, and looking at the whole of the evidence in its context as the trial Court have outlined it, we hold that the Court was entitled to find that the appellant's two statements were voluntary, in the sense that the prosecution has proved, and proved beyond reasonable doubt, in the classical words of Lord Sumner 30 that they have not been obtained from him either by fear or prejudice or hope of advantage exercised or held out by a person in authority. We would reiterate that we agree with the trial Court that no force in the first place was used, and no inducement of any kind was offered by the police. Indeed, the state- 35 ment made by the appellant that he had repented for acting like an animal on that evening in having a sexual intercourse with his daughter, is a statement, to say the least, showing that at that time he spoke like a father and had realized that he behaved like an animal. We would, therefore, affirm the 40

Court's decision to admit the two confessions as being made voluntarily.

The further submission of counsel was that in this case there was insufficient evidence before the trial Court to find the appellant guilty of incest on both counts, especially as it relied on the evidence of the complainant alone, and wrongly decided that the evidence of Xenia could, in any way be considered as corroborating the version of the complainent that her father had intercourse with her. We have indeed considered the whole evidence with the utmost of care, as well as any other matters to which the complainant had deposed in Court, and we find ourselves in agreement with the trial Court that the circumstantial evidence against the appellant was overwhelming with regard to count 2.

We therefore, dismiss this contention of counsel and affirm the decision of the Court on this count 2.

Now, dealing with count 1, I must confess that in spite of the fact that the trial Court had believed the evidence of the complainant, nevertheless, having discussed at a conference the case with my learned brothers, I have agreed, although reluctantly, that it was not safe on the particular facts of this case to find the accused guilty on count 1 also. See *Hjisavva alias Koutras* v. *The Republic*, [1976]* 2 J.S.C. 302, and the recent case of *Kouppis* v. *Republic*, [1977]** 11 J.S.C. 1860, at p. 1900.

Accordingly, we allow the appeal on count 1 and we quash the sentence passed on that count.

As to the sentence on count 2. having considered the whole behaviour of the appellant, who to the end showed no remorse but tried to throw the blame on someone else, we think that the sentence of seven years' imprisonment is not a sentence which requires intervention by this Court in the particular circumstances of this case.

Appeal on count 1 allowed.

Conviction and sentence on count 2 affirmed.

Appeal partly allowed.

* To be reported in (1976) 2 C.L.R.

** To be reported in (1977) 2 C.L.R.