

1979 October 19

[MALACHTOS, DEMETRIADES AND SAVVIDES, JJ.]

MICHALAKIS ANDREOU PSYLLAS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4064*).

*Criminal Procedure—Practice—Evidence—Confessions by accused to Police produced in Court without objection—Accused denying commission of offence when giving evidence on oath—Whether Prosecution bound to call further evidence to prove voluntariness of confession—And whether Court under duty, by virtue of section 54 of the Criminal Procedure Law, Cap. 155, to call as witnesses the Police Officers involved in obtaining the statements.* 5

*Criminal Law—Sentence—Housebreaking—Breaking and entering into a church and stealing therefrom th. sum of £0.750 mils—Twelve months' imprisonment—Young offender—Aged twenty—Getting married and doing well in his work after commission of offence—Under treatment by a neurologist—Though appellant might be considered as an incorrigible criminal, in view of events which took place after commission of offence and his recent behaviour sentence of imprisonment not the proper sentence under special circumstances of this case—Probation order substituted therefor.* 10 15

The appellant was convicted by the District Court of Larnaca of the offence of house-breaking, in that on the 1st June, 1978, he broke and entered a church and stole therefrom the sum of £0.750 mils and was sentenced to twelve months' imprisonment. He admitted the commission of the offence both in his statement to the police and in his reply to the formal charge, which were 20

put in evidence without any objection to their admissibility by his advocate who was neither the one nor the other of the two advocates appearing for him in this appeal. When called upon to make his defence the appellant in his evidence on oath denied that he confessed his guilt on his own free will but upon a promise by the Police that if he confessed he would not be kept in the Police Station that night but he would be set free.

The appellant who was 20 years of age had 16 similar previous convictions most of which for church-breaking and theft. In a social investigation report, which was before the trial Court, it was stated that in February, 1979 the appellant got married to his present wife, who came from a poor family of the village of Livadhia in Larnaca; that they loved each other and out of their marriage they have got an infant child; that his wife showed understanding to him and to his problems; that for the last year the appellant worked as a labourer together with his father-in-law and that his employer was satisfied with his work and all his fellow workers were, also, pleased with his behaviour.

A few months before he was convicted by the trial Court, the appellant started treatment by a neurologist in Larnaca and the report of this neurologist was that he was improving.

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

- (a) That although the written statement and answer to the formal charge were produced in Court without objection, yet, after the appellant had denied the commission of the offence, his confession was not a voluntary one and it was the duty of the Prosecution to call evidence to prove that the confession was a voluntary one as the burden of proof was always on them; and that it was the duty of the trial Judge under section 54\* of the Criminal Procedure Law, Cap. 155

\* Section 54 provides as follows:

"54: The Court, at any stage of the proceedings, may call any person as a witness or re-call and further examine any person already examined and the Court may examine or re-call and further examine any such person if his evidence appears to the Court to be essential to the just determination of the case".

to call as witnesses the Police Officers who were involved in obtaining the statement.

- (b) That the trial Court overlooked the social investigation report and the health of the appellant who was, admittedly, suffering from his nerves. 5

*Held*, (1) that though the burden of proving the voluntariness of a confession is always on the Prosecution, in the case in hand the Prosecution were not bound to apply to the Court to call further evidence after they closed their case and they left the case to be decided on the evidence already adduced; that though under section 54 of Cap. 155 the Court has a discretionary power to call at any stage of the proceedings any person if his evidence appears to the Court to be essential to the just determination of the case it is not bound to do so, particularly in the present case where responsible Counsel was appearing for the defence and it was his duty to move the Court to this effect if he so wished; and that, therefore, the appeal against conviction must fail. 10 15

(2) That though, from his record, the appellant appears to be an incorrigible criminal, in view of the events which took place after the commission of this offence and his recent behaviour, the sentence of imprisonment was not the proper one to be imposed under the special circumstances of this case; and that, therefore, the sentence of the trial Court will be set aside and a probation order requiring the appellant to be under the supervision of a probation officer of the District of Larnaca for a period of two years will be substituted therefor. 20 25

*Appeal against conviction dismissed.*

*Appeal against sentence allowed.*

**Appeal against conviction and sentence.**

Appeal against conviction and sentence by Michalakis Andreou Psyllas who was convicted on the 6th April, 1979 at the District Court of Larnaca (Criminal Case No. 797/79) on one count of the offence of house-breaking, contrary to section 30

292(a) of the Criminal Code, Cap. 154 and was sentenced by Pitsillides, S.D.J. to twelve months' imprisonment.

*J. Erotocritou* with *Ant. Georghiades*, for the appellant.

5 *S. Nicolaidis*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

MALACHTOS J. gave the following judgment of the Court. The appellant, who was on the 15th of June, 1979 found guilty in a summary trial by the District Court of Larnaca for the offence  
10 of house-breaking contrary to section 292(a) of the Criminal Code Cap. 154, that on the 1st day of June 1978 at Zygi, in the District of Larnaca, broke and entered Saint Kyriacos Church and stole therefrom the sum of £0.750 mils in cash and was  
15 sentenced to 12 months imprisonment as from the 6th July 1979, filed the present appeal both against his conviction and sentence.

The following are the facts of the case:

In the afternoon of the 2nd June 1978 the priest, together with a member of the Committee of Saint Kyriacos Church—which is situated at Zygi—visited the said church and found out that it  
20 had been broken into and a sum of £0.750 mils, which was kept in one of the drawers of the church table for candles (bangari), was missing. The matter was reported to the Larnaca Police who, on the 3rd June 1978, at 10.15 p.m., arrested the appellant and brought him to the Police Station. There and then the  
25 appellant made a written statement where he admitted that he forced open the door of the altar of the church and stole about £0.500 mils in cash, which was in a tray on the church table for candles, and left the church through the same door. On being formally charged he said: "I admit that I opened the church  
30 but I did it simply because I did not have my money on me."

Both the statement and the answer to the formal charge were put in evidence without any objection to their admissibility by his advocate who was neither the one nor the other of the two advocates appearing for him in this appeal.

When the accused was called upon by the trial Judge to make his defence, he went to the witness box and gave evidence on oath where he denied that he confessed his guilt on his own free will but that he was promised by the Police that if he confessed he would not be kept in the Police Station that night but he would be set free. The trial Judge, in considering the evidence adduced, did not accept his version and found him guilty of the offence charged. 5

A list of his previous convictions was then produced, containing 16 similar convictions, all admitted, most of which are church-breaking and theft. He was at first committed to the Reform School and then he was sent to prison for terms of imprisonment varying from 6 to 18 months. 10

As the appellant was at the time 20 years of age, the trial Judge adjourned the case to the 6th July, 1979 for sentence and ordered that a social investigation report should be prepared in the meantime. 15

Counsel for the appellant submitted that although his written statement and answer to the formal charge were produced in Court without objection, yet, from the time the appellant in giving evidence before the trial Court denied the commission of the offence, his confession was not a voluntary one but it was made after a promise, as he—the appellant—alleged, it was the duty of the Prosecution to call evidence to prove that the confession was a voluntary one, as the burden of proof was always on them. He further submitted that it was the duty of the trial Judge, by section 54 of the Criminal Procedure Law Cap. 155, which provides that the Court at any stage of the proceedings may call any person as a witness or recall and further examine any person already examined and the Court may examine or recall and further examine any such person if his evidence appears to the Court to be essential to the just determination of the case, in this particular case to call as witnesses the Police Officers who were involved in obtaining the statement. Since this was not done, the appeal against conviction should be allowed. 20  
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We must say that we entirely disagree with this submission of

counsel; it is quite true that the burden of proving the voluntariness of a confession is always on the Prosecution, but in the case in hand the Prosecution were not bound to apply to the Court to call further evidence after they closed their case and they left  
5 the case to be decided on the evidence already adduced.

Under section 54 of the Criminal Procedure Law Cap. 155 the Court has a discretionary power to call at any stage of the proceedings any person if his evidence appears to the Court to be essential to the just determination of the case, but is not  
10 bound to do so, particularly in the present case where responsible counsel was appearing for the defence and it was his duty to move the Court to this effect, if he so wished. The appeal, therefore, against conviction fails.

Coming now to the appeal against sentence, counsel for the  
15 appellant submitted that this is a peculiar case creating some difficulty. The trial Court, he submitted, overlooked the social investigation report and the health of the appellant who is, admittedly, suffering from his nerves.

It is clear from the judgment of the trial Judge that in passing  
20 sentence he treated the appellant as incorrigible, taking into consideration his past record, and did not give weight to essential factors which appear in the social investigation report.

In the social investigation report it is stated that in February, 1979 the appellant got married to his present wife, who comes  
25 from a poor family of the village of Livadhia in Larnaca. They love each other and out of their marriage they have got an infant child. His wife shows understanding to him and to his problems. For the last year the appellant works as a labourer together with his father-in-law and the information is that his  
30 employer is satisfied with his work and all his fellow workers are also pleased with his behaviour.

A few months before he was convicted by the trial Court, the appellant started treatment by a neurologist in Larnaca and the report of this neurologist is that he is improving.

35 As we have already said, the appellant, from his record, appears to be an incorrigible criminal, but in view of the events

which took place after the commission of this offence and his recent behaviour, we are of the opinion that the sentence of imprisonment, under the special circumstances of this case, was not the proper one to be imposed.

We, therefore, set aside the sentence of the trial Court and we make a probation order requiring him to be under the supervision of a probation officer of the District of Larnaca for a period of two years as from today. The supervising Court shall be the District Court of Larnaca. The probationer shall reside in the District of Larnaca. 5  
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In the result, the appeal against conviction is dismissed and the appeal against sentence is allowed.

*Appeal against conviction dismissed. Appeal against sentence allowed.* 15