

1980 January 31

[TRIANTAFYLIDIS, P., L. LOIZOU HADJIANASTASSIOU, JJ.]

MICHAEL THEODOROU,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 4100*).

*Criminal Law—Conviction of forgery and uttering false document—  
Preceded by acquittal on four other counts for the same offences—  
Trial Judge making conclusive finding as to appellant's credibility,  
and finding him to be a liar at stage of acquittal on other counts—  
5 Conviction mainly based on evidence of one witness who was  
believed by the trial Court—Way in which appellant's credibility  
was dealt with has fatally prejudiced his defence—Conviction  
unsafe and unsatisfactory—Set aside—No new trial ordered  
in the circumstances of this case.*

10 *Criminal Procedure—Conviction—Setting aside of, because appellant  
was prejudiced in his defence—No new trial ordered in the circum-  
stances of this case.*

15 The appellant, a police constable, was tried by the  
District Court of Nicosia on a charge containing six  
counts charging him with forgery and uttering false documents.  
He was acquitted on counts 1 to 4, because his guilt was not  
proved beyond reasonable doubt and, in particular, because  
it was not established that the alleged forgeries were made  
by him fraudulently; but was convicted on counts 5-6 of both  
20 the above offences. The document which was found to have  
been forged was a police sick-book and the forgery consisted  
of the alteration of an entry in the said sick book which was  
made by Dr. Peta, a Government medical officer. The alleged  
forged document did not actually exist and there was no direct  
25 evidence proving that the appellant had actually committed  
the forgery, or that he had uttered the false document. In  
deciding on the guilt or innocence of the appellant in respect

of counts 1 to 4 the trial Court made general findings about the character of the appellant whom he described as "a cheat and a liar". Then the trial Court proceeded to deal with the question of the guilt or innocence of the appellant on the said counts 5 and 6 in respect of which the only prosecution witness was Dr. Peta; and having already found the appellant to be a liar the trial Court believed Dr. Peta in every respect. 5

*Upon appeal against conviction:*

*Held*, that the proper stage in this particular case at which the trial Court could decide finally about the credibility of the appellant was not when it acquitted him in relation to counts 1 to 4 but when it compared his evidence with that of Dr. Peta for the purpose of deciding whether the appellant was guilty on counts 5 and 6; that the way in which the issue of the appellant's credibility was conclusively dealt with in relation to counts 1 to 4 has fatally prejudiced the defence of the appellant in relation to counts 5 and 6; that, therefore, the conviction of the appellant on counts 5 and 6 is unsafe and unsatisfactory and must be set aside. 10 15

*On the question whether this was a proper case in which to order a new trial of the above two counts before another Judge:* 20

That, as conceded by counsel for the respondents, though the offences of forgery and of uttering a false document are generally offences of a serious nature, in this particular instance the offences which were allegedly committed by the appellant, even assuming that he is guilty, were really of a formal nature and it was wrong in principle to pass on the appellant a sentence of imprisonment in respect of them, which entailed, also, automatically his dismissal from the Police force; that the appellant was sent to prison on December 8, 1979, and he has, therefore, been incarcerated for nearly two months; that in the circumstances, it is not in the interests of justice to order a new trial; and that, therefore, his conviction, as well as the sentence passed upon him, must be set aside and the appeal be allowed accordingly. 25 30 35

*Appeal allowed.*

**Appeal against conviction and sentence.**

Appeal against conviction and sentence by Michael Theodorou who was convicted on the 8th December, 1979 at the District

Court of Nicosia (Criminal Case No. 20153/79) on one count of the offence of forgery, contrary to sections 331, 333(b) and 337 and on one count of the offence of uttering a false document contrary to section 339 of the Criminal Code Cap. 154 and was  
 5 sentenced by Artemides, D.J. to six months' imprisonment on each count to run concurrently.

*E. Efstathiou*, for the appellant.

*R. Gavrielides*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

10 TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant, who was a police constable, has appealed against his conviction, on December 8, 1979, in  
 15 criminal case No. 20153/79, by the District Court of Nicosia, of the offences of forgery, contrary to sections 331, 333(b) and 337 of the Criminal Code, Cap. 154, and of uttering  
 a false document, contrary to section 339 of Cap. 154. He was sentenced to six months' imprisonment and he has appealed, also, against this sentence as being manifestly excessive and  
 20 wrong in principle.

20 The offences in question were, as stated by the trial Court, committed on May 23, 1979.

The document which was found to have been forged was a police sick-book and the forgery consisted of the alteration  
 of an entry in the said sick-book which was made by Dr. Peta,  
 25 a Government medical officer in Nicosia, Dr. Peta had made an entry to the effect that she had seen the appellant as a patient, but this entry was altered so as to indicate that she had granted  
 to him a day's sick-leave in respect of May 23, 1979. The relevant part of a page of the sick-book was not produced because,  
 30 as held by the trial Court, it was torn away by the appellant.

The convictions of the appellant of the offences in question were in relation to counts 5 and 6 in a charge containing six  
 counts. The other four counts, 1 to 4, charged him with forgery  
 and uttering false documents, again on May 23, 1979 in con-  
 35 nection with another police sick-book.

He was acquitted on counts 1 to 4 because, as found by the trial Court, his guilt was not proved beyond reasonable doubt and, in particular, because it was not established that the alleged forgeries in the relevant police sick-book were made by him

fraudulently. The trial Court, in deciding on the issue of the guilt or innocence of the appellant in respect of counts 1 to 4, went, in our opinion, beyond what was needed or warranted for the purpose of deciding that issue and proceeded to make general findings about the character of the appellant whom he described as “a cheat and a liar”. 5

Then the Court proceeded to deal with the question of the guilt or innocence of the appellant on counts 5 and 6. The only prosecution witness against the appellant as regards these two counts was Dr. Peta and having already found the appellant to be a liar the trial Court believed Dr. Peta in every respect. 10

In our opinion the proper stage in this particular case at which the trial Court could decide finally about the credibility of the appellant was not when it acquitted him in relation to counts 1 to 4 but when it compared his evidence with that of Dr. Peta for the purpose of deciding whether the appellant was guilty on counts 5 and 6. 15

The way in which the issue of the appellant’s credibility was conclusively dealt with in relation to counts 1 to 4 has fatally prejudiced the defence of the appellant in relation to counts 5 and 6; and in evaluating how seriously the appellant has been prejudiced it is useful to bear in mind that the alleged forged document to which counts 5 and 6 relate did not actually exist and, also, that there was no direct evidence proving that the appellant had actually committed the forgery, or that he had uttered the false document. All these matters were found by the trial Court to have been proved on the strength of inferences which were drawn after the appellant had already been found to be a liar, when he was acquitted in respect of counts 1 to 4. 20  
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Moreover, the finding that the appellant was a liar was to a large extent based on the fact that the trial Court had, wrongly in our view, found that a sick certificate issued by a private medical practitioner and granting the appellant sick-leave for six days as from May 22, 1979—on the basis of which he could, under the established practice, have been granted sick-leave by Dr. Peta on May 23, 1979—was not actually issued as it appears on the face of it on May 22, 1979, but later on May 24, 1979, and that it was dated fraudulently, apparently 35

by the doctor who had issued it, and with the connivance of the appellant, so as to be made to appear that it was issued earlier, on May 22, 1979.

5 In the light of all the foregoing we find that the conviction of the appellant on counts 5 and 6 is unsafe and unsatisfactory and has to be set aside.

10 We have considered whether this is a proper case in which to order a new trial of the appellant on these two counts before another Judge. What has made us in the end decide not to adopt such a course, is, *inter alia*, the fact that, as very fairly conceded by counsel for the respondents, though the offences of forgery and of uttering a false document are generally offences of a serious nature, in this particular instance the offences which were allegedly committed by the appellant, even assuming  
15 that he is guilty, were really of a formal nature and it was wrong in principle to pass on the appellant a sentence of imprisonment in respect of them, which entailed, also, automatically his dismissal from the Police force. The appellant was sent to prison on December 8, 1979, and he has, therefore, been incarcerated for nearly two months. We do not think, in the circumstances, that it is in the interests of justice to order a new trial; we, therefore, have decided to set aside his conviction, as well as the sentence passed upon him, and to allow this appeal accordingly.

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*Appeal allowed.*