1983 November 24

[TRIANTAFYLLIDES, P., MALACHTOS, PIKIS, JJ.]

LAMBROS PHOTIOU MOUSOULIDES,

Appellant.

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 4418).

Criminal Law—Evidence—Accomplice—Witness with an interest to serve—Principles applicable.

The appellant was convicted on two counts of forgery of travellers cheques, two counts of uttering the same forged cheques and two counts of obtaining money by false pretences by falsely representing the cheques in question to be his property inducing thereby Constantinos Palalas, a witness for the Prosecution to part with something approximating the equivalent in Cyprus pounds of the value of the two cheques. The conviction of the appellant was mainly founded on the evidence of the aforesaid Palalas, the owner of a gambling club.

Upon appeal against conviction Counsel for the appellant mainly contended:

(a) That the trial Court misdirected itself by not treating Palalas as an accomplice and duly warn itself of the dangers of acting on his uncorroborated evidence.

(b) That if Palalas was not an accomplice he was a witness with an interest to serve and again a direction as to the dangers inherent in acting on his uncorroborated testimony was necessary.

(c) That the trial Court wrongly accepted the evidence of Palalas as credible whereas it ought to have rejected it as contradictory and objectively unacceptable.—

Held, (1) that for a witness to be treated as an accomplice,

he must either be self-confessed accomplice or his evidence must, judged solely or in combination with other evidence in the case, raise the issue of his complicity in the crimes committed; that there was nothing whatever to suggest that Palalas knew of the theft of the cheques, their true origin or the intention of the accused to forge them with a view to appropriating the proceeds thereof; and that, consequently, the trial Court rightly rejected the submission that Palalas was an accomplice; accordingly contention (a) should fail.

(2) That not every witness who allegedly possesses an ulterior motive or with an axe to grind against the accused, is a witness with an interest to serve; that the interest he must possess in order to be legitimately treated as a witness with an interest to serve, is an interest associated with the success of the criminal venture with which the accused are charged; that there must be evidence tending to suggest complicity on his part in the commission of the crime, though not such as to render him an accomplice in the commission of the offence. The fact that Palalas apparently had an interest to cash the cheques in order to facilitate the accused to gamble, did not categorize him as a witness with an interest to serve; that there was nothing to fault the approach of the trial Court respecting the evidence of Palalas; accordingly contentions (b) and (c) should fail.

Appeal dismissed.

Cases referred to:

Ioannou and Another v. *Police*, 23 C.L.R. 266;

Zisimides v. *Republic* (1978) 2 C.L.R. 382;

R. v. *Prater*, 44 Cr. App. R. 83;

R. v. *Beck* [1982] 1 All E.R. 807.

Appeal against conviction.

Appeal against conviction by Lambos Photiou Mousoulides who was convicted on the 28th May, 1983 at the Assize Court of Nicosia (Criminal Case No. 6718/83) on two counts of the offence of forgery contrary to sections 333(d)(i), 336 and 20 of the Criminal Code, Cap. 154 and on two counts of the offence of uttering forged cheques contrary to sections 331, 333(d)(i), 336, 339 and 20 of the Criminal Code, Cap. 154 and on two counts of the offence of obtaining money by false pretences

contrary to sections 297, 298 and 20 of the Criminal Code, Cap. 154 and was sentenced by Boyadjis, P.D.C., Laoutas, S.D.J. and Michaelides, D.J. to concurrent terms of imprisonment ranging from 1 1/2 years to 3 years.

Chr. Kitromilides, for the appellant.

M. Photiou, for the respondent.

TRIANTAFYLLIDES, P.: The judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS, J.: The appellant was convicted and sentenced to concurrent terms of upto three years' imprisonment on two counts of forgery of travellers cheques, two counts of uttering the same forged cheques and, lastly, two counts of obtaining money by false pretences, by false representing the cheques in question to be their property, inducing thereby Constantinos Efrem Palalas, a witness for the prosecution, to part with something approximating the equivalent in Cyprus Pounds of the value of the two cheques; each of the two cheques was for an amount of £100.–.

In the judgment of the Assize Court of Nicosia, the appellant aided the thief of the two travellers cheques co-accused with him before the Assize Court, to forge and utter them in order to induce Constantinos Efrem Palalas to part with the equivalent of the two travellers cheques in Cyprus Pounds. Palalas relied mostly on representations made by the appellant parting with the money. The conviction of the appellant was mainly founded on the evidence of the aforesaid Palalas, the owner of a gambling club, who testified of the complicity of the appellant in the commission of the six offences, a complicity that rendered him, under s. 20 of the Criminal Code, liable to be convicted as a principal offender.

The appeal was directed against the conviction, ill founded in the submission of the appellant, because of failure on the part of the trial Court to appreciate and evaluate in the proper perspective the evidence of Palalas, as well as ponder its effects. It was a misdirection on the part of the trial Court, we were told, not to treat Palalas as an accomplice and, duly warn itself of the dangers of acting on his uncorroborated evidence. If not an accomplice, he was a witness with an interest to serve, against necessitating a direction as to the dangers inherent in

acting on his uncorrobrated testimony. Ultimately—this was the last point of appeal—the Court wrongly accepted the evidence of Palalas as credible, whereas it ought to have rejected it as contradictory and objectively unacceptable.

Counsel referred us in particular to two decisions of the Supreme Court, namely, *Ioannou And Another* v. *The Police*, 23 C.L.R. 266, establishing that the question whether a particular witness is an accomplice is one of mixed law and fact and, *Zisimides* v. *Republic* (1978) 2 C.L.R. 382, giving support to the principle approved in *R.* v. *Prater*, 44 Cr. App. R. 83, with regard to the evaluation of the evidence of a witness with an interest to serve.

Counsel made a valiant effort to persuade us that the trial Court went wrong in its appreciation of the evidence of Palalas. We remained unpersuaded that they erred in any respect, either in its approach or evaluation of the testimony of Palalas. Therefore, we refrained from calling upon counsel for the Republic to give any reply to the submissions of counsel for the appellant. Our reasons for this decision are:-

For a witness to be treated as an accomplice, he must either be a self-confessed accomplice or his evidence must, judged solely or in combination with other evidence in the case, raise the issue of his complicity in the crimes committed. There was nothing whatever to suggest that Palalas knew of the theft of the cheques, their true origin or the intention of the accused to forge them with a view to appropriating the proceeds thereof. That Palalas was running a gambling establishment, illegally as it may be presumed, is not a fact that does in itself connect him with the criminal designs of the appellant or his accomplice. In fact, the evidence established he was the victim of their criminal venture, in that he was induced to part with money in exchange for stolen and forged documents. Soon after the appellant and his accomplice left his club, in the early hours of the morning, he became suspicious about the origin of the cheques and took steps to trace the appellant. When his suspicions were confirmed at the bank later that morning, he immediately reported the matter to the Police. That he cashed the cheques on the understanding that the proceeds would be used for gambling at his club, in no way made him

a participant in the crimes committed by the appellant. Consequently, the trial Court rightly rejected the submission that Palalas was an accomplice.

The suggestion that Palalas was, in the sense of *R.* v. *Prater*, supra, a witness with an interest to serve, is equally misconceived. The legal position with regard to witnesses with an interest to serve, merits further consideration lest the position as to who falls into this category of witnesses, is misunderstood. The position was reviewed in very great detail, in a fairly recent decision of the English Court of Appeal (Criminal Division), in *R.* v. *Beck* [1982] 1 All E.R. 807. On a study of this case and the cases analysed therein, the first proposition that emerges, is that not every witness who allegedly possesses an ulterior motive or with an axe to grind against the accused, is a witness with an interest to serve. The interest he must possess in order to be legitimately treated as a witness with an interest to serve, is an interest associated with the success of the criminal venture with which the accused are charged. There must be evidence tending to suggest complicity on his part in the commission of the crime, though not such as to render him an accomplice in the commission of the offence. The fact that Palalas apparently had an interest to cash the cheques in order to facilitate the accused to gamble, did not categorize him as a witness with an interest to serve. It did not show support on complicity in the crime, a crime of which he was one of the victims.

Where the evidence establishes that a witness' evidence may be tainted with an improper motive, in the sense above explained, there is no hard and fast rule as to the directions that should be given with regard to the approach or evaluation of his evidence. Certainly, there is no rule comparable to the one respecting the treatment of the evidence of an accomplice. On a consideration of *Beck*, supra, the position appears to be this: The evidence of a witness with an interest to serve, must be examined with caution; the caution required varies with the facts of the case. The caution or scepticism with which his evidence must be approached varies in proportion to the nature of the interest he had to serve and the extent of it. The greater the interest the greater must the caution be.

In our judgment, there is nothing to fault the approach of the Assize Court respecting the evidence of Palalas. On the contrary, the examination made by the trial Court, of his evidence, in its careful judgment, was thorough and its findings perfectly warranted.

The appeal is dismissed.

Appeal dismissed.