

1984 June 25

[TRIANTAFYLLIDES, P., L. LOIZOU, LORIS, JJ.]

ARISTOS SOCRATOUS AND OTHERS,

Appellants.

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos. 4505–4520*).

Criminal Procedure—Appeal—Grounds of appeal—Need to file accurately drafted full grounds of appeal—Appeal on general ground that “the facts were not correctly found by the trial Court” —In the light of the special circumstances of these cases Court of appeal reluctantly not finding that there have not been filed valid notices of appeal because of non-compliance with section 138 of the Criminal Procedure Law, Cap. 155—Rule 24 of the Criminal Procedure Rules. 5

The above appeals were filed on two general grounds of appeal: First, that the facts were not correctly found by the trial Court and secondly, that the proper legal principles were not applied. The second ground of appeal was withdrawn on the day of hearing of the appeals. 10

Held, that though the need to file accurately drafted full grounds of appeal has been repeatedly stressed in the past, this Court has reached the conclusion, not without considerable reluctance, that on this particular occasion, in the light of the special circumstances of these cases, it should not go so far as to find that there have not been filed valid notices of appeal, because of non-compliance with section 138 of the Criminal Procedure Law, Cap. 155, but it will not hesitate to do so in a proper case in future; and that, accordingly, it will proceed to hear these appeals. 15 20

Order accordingly.

Cases referred to:

HjiCosta (No. 2) v. Republic (1965) 2 C.L.R. 95 at pp. 100-101;

Kokkinos v. Police (1968) 2 C.L.R. 147 at p. 148;

5 *Kirzis v. Medical Department of Famagusta* (1969) 2 C.L.R.
213 at p. 215.

Appeals against conviction and sentence.

Appeals against conviction and sentence by Aristos Socratous and others who were convicted on the 22nd February, 1984 at the District Court of Nicosia (Criminal Case No. 12581/83)
10 on one count of the offence of assembling for the purpose of gambling contrary to sections 2, 6(1), 12 and 15 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 and were sentenced by Laoutas, S.D.J. to pay fines ranging from £75.- to £130.-.

15 *P. Angelides*, for the appellants.

A.M. Angelides, Senior Counsel of the Republic for the respondents.

TRIANAFYLLIDES P. gave the following decision of the Court.

20 These appeals were filed on the 6th March 1984, on the basis of two general grounds of appeal: First, that the facts were not correctly found by the trial Court, and, secondly, that the proper legal principles were not applied. The second ground of appeal has been today withdrawn.

25 A notice, dated the 10th March 1984, that these appeals had been fixed for hearing today was delivered at the office of counsel for the appellants on the 15th March 1984.

The record of these appeals was available not later than the 25th May 1984; and actually the judgment of the trial Court had become available on the 10th March 1984, a few days after
30 these appeals were filed on the 6th March, 1984.

Until today no attempt was made to supplement the grounds of appeal by filing a notice under rule 24 of the Criminal Procedure Rules.

35 Section 138 of the Criminal Procedure Law, Cap. 155, provides that every notice of appeal shall "set out in full the grounds

on which it is founded" and that "no notice of appeal _____ shall be valid unless it complies with the requirements of this section".

Repeatedly in the past this Court has drawn attention to the need to file proper grounds of appeal: 5

In *HjiCosta (No. 2) v. The Republic*, (1965) 2 C.L.R. 95, the following were stated (at pp. 100-101):

"The appellant lodged this appeal, against conviction only, on the 16th June 1965.

The grounds of appeal, as stated in the notice of appeal, read as follows: 10

'The conviction of the accused was erroneous in law and was not supported by the evidence adduced. Full grounds will be given when the record of the case will be ready'. 15

When, however, the appeal came up for hearing on the 28th September, 1965, no fuller grounds had been filed, as previously undertaken by the notice of appeal.

The Court cannot but record its surprise and regret for the failure of counsel to file full grounds of appeal, in due time before the hearing of the appeal. The practice of allowing counsel to file notices of appeal with generic grounds, subject to fuller grounds being filed later once the record of proceedings becomes available (vide also rule 24 of the Criminal Procedure Rules) is only intended to enable the notice of appeal to be filed within the proper period of time for appealing, without the need of applying for extension of such period, and it is not intended to enable an appellant to avoid complying with the requirement of filing full and specific grounds of appeal. 20 25 30

This Court will not hesitate, in a proper case, to decline hearing counsel or an appellant on grounds which are not properly stated in the notice of appeal as originally filed or, even, as supplemented in due course.

In the present case, having drawn the attention of counsel for appellant to the inadequacy of the presentation of the grounds of appeal and having received due explanations 35

from him, we have decided to proceed with the hearing of the appeal on the notice of appeal as filed, but we have, nevertheless, thought fit to make these remarks so as to ensure that in future such a situation will not be allowed to arise”.

In *Kokkinos v. The Police*, (1968) 2 C.L.R. 147, this Court said the following (at p. 148):

“Counsel for the appellants in these two appeals (which arise in the same case) lodged today supplementary grounds to complete the notices filed from prison by the appellants in person, where the only ground given is that they are innocent.

There have been cases where the filing of supplementary grounds was allowed, even at the opening of the appeal where such course was found helpful in dealing with the appeal; but we feel that we have to guard against the establishment of a practice of readily allowing the filing of grounds of appeal at the last moment; especially where such course tends to create a position different to that presented in the original notice. In this connection one should not lose sight of the provisions in rule 24(1) of the Criminal Procedure Rules.

In the circumstances of the present case, we do not feel inclined to allow the filing of supplementary grounds at this late stage. Counsel can argue the appeal on the general ground that the appellants are innocent, for what such ground may be worth”.

Also, in *Kirzis v. The Medical Department of Famagusta*, (1969) 2 C.L.R. 213, the relevant part of the judgment reads as follows (at p. 215):

“One of the grounds on which the appellant has based his appeal is that his conviction ‘is contrary to the weight of evidence’. We should pause here, for a moment, and observe that such a ground is not one envisaged, as such, by our law, which is much the same in this respect as English law.

In this connection useful reference may be made to the case of *Aladesuru and Others v. R.* (39 Cr. App. R. 184)

in which the Privy Council stated that the expression 'against the weight of evidence' is inaccurate and it cannot properly be substituted for the ground 'unreasonable or which cannot be supported having regard to the evidence'; it may be added, however, that the Privy Council went on to say that in a proper case it would not refuse to review the evidence if a *prima facie* case was shown that the verdict appealed from was one at which no reasonable tribunal could have arrived. 5

In any case, appellants should always take care to frame their grounds of appeal, in criminal appeals, in accordance with the terminology used in the relevant provisions in our law, and particularly sections 137 and 145 of the Criminal Procedure Law (Cap. 155)". 10

Having referred to the above dicta, which stress the need to file accurately drafted full grounds of appeal, we have reached the conclusion, not without considerable reluctance, that on this particular occasion, in the light of the special circumstances of these cases, we should not go so far as to find that there have not been filed valid notices of appeal, because of non-compliance with section 138 of Cap. 155, but we shall not hesitate to do so in a proper case in future. 15 20

We shall, therefore, proceed to hear these appeals.

Order accordingly.