1986 November 6

[TRIANTAFYLLIDES, P., LORIS, KOURRIS, JJ.]

GEORGHIOS DEMETRIS CHRISTOFOROU,
ALIAS KKELES,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4779).

Credibility of witnesses—A matter within the province of trial Court—If findings reasonably open, this Court does not interfere—If conclusions drawn therefrom not warranted, this Court is in as good a position as the trial Court to draw its own conclusions from the primary facts.

This appeal is directed against the conviction of the appellant on a single count of possession of 0.680 grams of cannabis resin. The appellant, when called upon to defend himself, elected to give evidence on oath. The trial Court rejected appellant's version.

The present appeal turns mainly on the issue of credibility.

Held, dismissing the appeal: (1) The credibility of the witnesses is within the province of the trial Court. If on the evidence it was reasonably open to it to make the findings at which it arrived, this Court will not interfere, unless the inferences drawn from such findings were not warranted, whereupon this Court is in as good a position as the trial Court to draw its own conclusions from the primary facts. In this case the appellant failed to discharge the burden cast upon him.

(2) Appellant's complaint that the trial Judge did

not direct his mind properly to the mens rea required for the said offence is not warranted.

Appeal dismissed.

Cases referred to:

Makki v. *The Republic* (1972) 2 C.L.R. 76;

Anastassiou v. *The Republic* (1972) 2 C.L.R. 121.

Appeal against conviction.

Appeal against conviction by Georghios Demetri Christoforou alias Kkeles who was convicted on the 30th July, 1986 at the District Court of Famagusta (Criminal Case No. 3742/85) on one count of the offence of possessing cannabis resin contrary to the provisions of the Narcotic Drugs and Psychotropic Substances Law, 1977, (Law No. 29/77) and was sentenced by Eliades, D. J. to six months' imprisonment.

P. Angelides, for the appellant.

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

TRIANTAFYLLIDES P.: The judgment of the Court on this appeal will be delivered by Loris, J.

LORIS J.: The present appeal is directed against the conviction of the appellant by a Judge of the District Court of Famagusta sitting at Paralimni (Criminal case No. 3742/85) on a single count of possession of 0.680 gr. of cannabis resin contrary to the provisions of the Narcotic Drugs and Psychotropic Substances Law 1977 (Law No. 29/77).

The salient facts of this case are very briefly as follows:

On 28.5.85 at about 6.00 p.m. at Ayia Napa, a police squad consisting of six policemen dressed in mufti, patrolling in three police cars intercepted the appellant who was driving motor car under Reg. No. KU 797; one of the constables P. W. 2 alighted from his car signalling to appellant to stop.

The appellant initially reduced the speed of his vehicle giving the impression that he was about to come to a stand-still but suddenly he accelerated driving towards the sea-shore. The Policemen chased him and when they were near to him the appellant stopped his car, opened the door thereof and attempted to run away. The policemen ran after him and they fired two warning shots before they arrested him.

Police Sgt. Eracleous searched the vehicle of the accused in his presence and found a small quantity of brown substance which was later, after analysis, proved to be cannabis resin; on being asked by this witness appellant replied «εν ηξέρετε εσείς που το εβάλετε, εν χασίσι»

Some time later flat No. 326 at Ayia Napa, where the appellant was staying on occasions, was searched with his consent in the presence of Police Inspector Miller, Sergeant Eracleous, Police Constable Demetriou (P.W. 6) and Police Constable Christoforou (P.W. 5). When asked, the appellant pointed out to the police the room in which he was staying as well as the bedstead on which he was sleeping. Whilst P.W.5 was raising up the bedsheet of the bed indicated by the appellant, a brown substance fell from the bed sheet on the bed. When this witness called Inspector Miller the appellant started shouting again that the brown substance was placed on his bed by the Police.

Both brown substances found as aforesaid, in the vehicle of the appellant and on his bedstead, were analysed by the Government Analyst and they were proved to be cannabis resin. The weight of both pieces is 0.680 grams

Twelve witnesses were called by the prosecution. When the accused was called upon to defend himself he elected and in fact gave evidence on oath. No witnesses were called by the defence.

The version of the appellant was that he did not understand who were the persons who attempted to stop him, as the policemen were in mufti and he was frightened owing to the fact that they were armed. He denied that

he had any quantity of cannabis resin either in his vehicle or in his room. He maintained that on both occasions the cannabis resin was placed in his vehicle and on his bed respectively by the police.

The learned trial Judge accepted in toto the evidence adduced by the prosecution and feeling satisfied beyond reasonable doubt that the case for the prosecution was proved, convicted the appellant as charged.

The trial Judge rejected the version of the appellant giving his reasons for so doing, which appear on record and we do not intend repeating.

The present appeal turns mainly on the issue of credibility.

It was stressed by this Court time and again that the credibility of the witnesses is within the province of the trial Judge who has the opportunity of hearing the witnesses and watching their demeanour in the witness box. If on the evidence before him it was reasonably open to him to make the findings to which he arrived at, then this Court will not interfere unless the inferences drawn therefrom are not warranted by the findings, whereupon this Court is in as good a position as the trial Court to draw its own conclusions from the primary facts.

Having considered the submission of counsel, in the light of the record and the judgment of the trial Judge, we are not satisfied that the appellant has discharged the burden cast on him to persuade this Court that the trial Judge went wrong in evaluading the evidence before him. The inferences drawn by him were reasonably open to him; and we may even go further and say that the inferences drawn by the trial Judge were the only inferences that could be drawn unequivocally from the primary facts proved.

In our view the conduct of the appellant at, and immediately after, his interception by the police coupled with his conduct at the time of the discovery of the cannabis resin in his vehicle and on his bed during the police search "warranted an inference of guilt which, in the absence of

any other evidence that might create some doubt in the mind of the trial Judge, warranted his conviction with the certainty required in a criminal trial" *(Makki* v. *The Republic (1972) 2* C.L.R. 76 at p. 80).

Learned counsel for appellant submitted further that the trial Judge did not direct his mind properly to the mens rea required for the offence with which we are concerned.

Having gone through the judgment of the Court below we find ourselves unable to agree with this submission of counsel as well.

The learned trial Judge has properly directed himself on this issue as well. He referred amply to the authorities settling that mens rea is required for offences of this nature *(Anastassiou* v. *The Republic (1972) 2 C.L.R. 121* and *Makki* v. *The Republic* (supra)) and has clearly stated the facts and his inferences establishing mens rea in the case under consideration. And we must say that we are in agreement with him.

For all the above reasons the appeal fails and is dismissed accordingly.

Appeal dismissed.