

1987 April 13

[TRIANTAFYLIDIS P LORIS STYLIANIDES JJ]

ANDREAS NICOLAOU,

*Appellant,*

v

THE REPUBLIC,

*Respondent*

*(Criminal Appeal No 4806)*

*Appeal — Criminal Appeal — Calling a witness who testified at the trial for giving further evidence and in effect falsify the testimony he gave at the trial — Principles governing the power of the Appellate Court to allow such a course*

5 The appellant was convicted, on 17 June 1986 of the offence of incest with his daughter filed this application for leave to call his daughter as a witness in order to testify further and in effect to falsify the evidence which she has given at his trial

10 Held *dismissing the application* (1) In dealing with an application such as the present one the appellate tribunal ~~does not~~ decide whether the evidence to be adduced before it is true but it only enquires whether such evidence is credible on its face or capable of being believed

(2) In the circumstances of this case this Court is not at all satisfied that the new version of the complainant is either credible on its face or capable of being believed

15 *Application dismissed*

*Cases referred to*

*Anstidou v The Police* (1973) 2 C L R 244,

*Zevedheos v The Republic* (1978) 2 C L R 47,

*R v Flower*, 50 Cr App R 22

20 **Application.**

Application for leave to call the daughter of the appellant as a witness in order to testify further and falsify the evidence which she had given at the trial

A. Andreou, for the appellant.

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

*Cur. adv. vult.*

5 TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant was convicted, on 17 June 1986, of the offence of incest with his daughter, Eleni Nicolaou, and was sentenced to seven years' imprisonment.

10 On 4 October 1986 the said daughter visited counsel who is appearing today for him, but who did not appear for him at the trial, and gave a written statement, which she signed, declaring that her evidence at the trial was false and that she had implicated her father because of feelings of revenge for his attitude towards her.

15 As a result we have now before us an application for leave to call the daughter of the appellant as a witness in order to testify further and, in effect, to falsify the evidence which she has given at the trial of the appellant. This application has been opposed by counsel appearing for the respondent.

20 There were cited to us by counsel the cases of *Aristidou v. The Police*, (1973) 2 C.L.R. 244, and *Zevedheos v. The Republic*, (1978) 2 C.L.R. 47. In the *Zevedheos* case this Court referred, with approval, to the judgment of Widgery J., as he then was, in *R. v. Flower*, 50 Cr. App. R. 22, from which it appears that in dealing with an application such as the present one the appellate tribunal 25 does not decide whether the evidence to be adduced before it is true but it only enquires whether such evidence is credible on its face or capable of being believed.

30 In the present instance there appears from the record before us that the appellant has confessed to the commission of the offence of which he was convicted and his confession was accepted as voluntary and true by the trial Court and formed part of the evidence on which his conviction was based. Also, the trial Court received in evidence complaints of the complainant to other persons as supporting the veracity of her story against her father. 35 The possibility that she was testifying against him and implicating him due to motives of revenge against him was put to her at the trial but she denied it and insisted that she was telling the truth. The

complainant did not recant immediately after the trial and she did not go to the police to retract her statement against her father, but about four months later she volunteered to give a statement to that effect to counsel for the appellant, and unlike what was done in the  
5 *Flower* case, the present application is not supported by an affidavit of the complainant retracting her evidence before the trial Court

In the light of all relevant considerations, we are not at all satisfied that the new version of the complainant is either credible  
10 on its face or capable of being believed. We think that it is a concocted afterthought and apparently she was instigated by others to go to counsel for the appellant and put forward her new story

We, therefore, have decided not to grant leave to call her as a  
15 witness before us and the application which has been made for this purpose is hereby dismissed

*Application dismissed*