

1987 March 17

[TRIANTAFYLIDIS, P., DEMETRIADES LORIS JJ]

ANDREAS NEOFYTOU ONISIFOROU,

Appellant.

v

THE POLICE,

Respondents

(Criminal Appeal No 4798)

Evidence — Criminal evidence — Corroboration — Lies told by the accused to the Police — The case law on the subject whether and in what circumstances can be treated as corroboration of other evidence

5 *Evidence — Criminal evidence — Unsworn statement from the dock — Trial Judge described it as evidence and stated that the appellant made a poor impression on him — Such statement is not evidence in the strict sense — In this case the trial Judge unduly treated the falsity of the statement as an element against the accused*

10 *Appeal — Credibility of witnesses — Instance when reversal of a finding as to credibility is justified*

This appeal is directed against the conviction of the appellant for rape of a cabaret artiste from Colombia

15 The trial Judge treated as reliable the evidence of the complainant and, moreover, found that such evidence was corroborated by the fact that the appellant, when arrested, told lies to the police and by the fact that he, also, told lies in his evidence before the trial Court

It must be noted that the appellant did not give evidence at his trial, but elected to make an unsworn statement from the dock

20 Held, *allowing the appeal* (1) By attributing the status of evidence to the unsworn statement of the appellant from the dock and by stating that the appellant made a very poor impression to him, the trial Judge has unduly treated the falsity of the unsworn statement from the dock of the appellant as an element against him, thus rendering his conviction unsatisfactory

25 (2) The evidence of the complainant was not reliable. It is, in this respect, sufficient to point out that in her evidence she relates conversations with the appellant even though it is indisputable that the appellant does not

understand Spanish and the complainant speaks only Spanish; and what they were saying allegedly to each other is most material as regards the version of the appellant that whatever took place between him and the complainant was with her consent.

(3) In the light of the circumstances of this case and of the case-law it was not safe for the trial Court to treat, in a general and sweeping manner, all lies told by the appellant to the Police as amounting to corroboration of the evidence of the complainant.

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Appeal allowed.

Conviction quashed.

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Cases referred to:

Anastassiades v. The Republic (1977) 2 C.L.R. 97;

Economides v. Zodhiatis, 1961 C.L.R. 306;

Foumaris v. The Republic (1978) 2 C.L.R. 20;

Katsiamalis v. The Republic (1980) 2 C.L.R. 107;

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R. v. Lucas [1981] 2 All E.R. 1008;

R. v. Dowley [1983] Crim. L.R. 168;

R. v. West [1984] Crim. L.R. 236;

R. v. R. [1985] Crim. L.R. 736;

Nicolaou v. The Police (1978) 2 C.L.R. 60;

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Khadar v. The Republic (1978) 2 C.L.R. 178;

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

Stylianou v. The Republic (1979) 2 C.L.R. 109;

Georghiades v. The Police (1981) 2 C.L.R. 155.

Appeal against conviction and sentence.

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Appeal against conviction and sentence by Andreas Neofytou Onisiforou who was convicted on the 24th October, 1986 at the District Court of Limassol (Criminal Case No. 21861/86) on one count of the offence of rape contrary to sections 144 and 145 of the Criminal Code Cap. 154 and was sentenced by Eleftheriou, D.J. to fifteen months' imprisonment.

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Chr. Pourgourides, for the appellant.

St. Theodoulou, for the respondents.

TRANTAFYLLIDES P. gave the following judgment of the Court. The appellant was convicted of the offence of rape committed on 22 July 1986, at Limassol, by having had unlawful carnal knowledge of a cabaret artiste from Colombia, without her consent, and was sentenced to fifteen months' imprisonment.

The learned trial Judge decided to treat as reliable the evidence of the complainant and found, also, that it was corroborated by other evidence adduced at the trial, as well as by the fact that the appellant told lies when the Police obtained from him a written statement on 24 July 1986, and, also, lied in his evidence before the trial Court.

In actual fact the appellant did not give evidence at his trial but he chose, as he was perfectly entitled to do, to make an unsworn statement from the dock denying completely any guilt.

It is stated in the judgment that the appellant made a very poor impression to the trial Judge, who was not satisfied that he was telling the truth and who, therefore, rejected his evidence as a whole.

It was pointed out in *Anastasiades v. The Republic*, (1977) 2 C.L.R. 97, 210, that it is not entirely accurate to describe an unsworn statement from the dock as evidence in the strict sense and, in any event, it appears to us that the trial Judge, by attributing the status of evidence to the unsworn statement of the appellant from the dock and by stating that the appellant made a very poor impression to him, especially when such impression must have been a very fleeting one because the said statement was very short indeed and it occupies only five lines of the record of the trial, has unduly treated the falsity of the unsworn statement from the dock of the appellant as an element against him, thus rendering his conviction unsatisfactory.

There is no doubt that the appellant would not, in any case, have been convicted had it not been for the evidence of the complainant, which the trial Judge treated as reliable and found, as already stated, that it was corroborated by other evidence in the case.

Having heard counsel for the appellant arguing that the evidence of the complainant should not have been accepted as credible evidence, and bearing in mind too that counsel for the respondents has very fairly stated during the hearing of this appeal

that such evidence could not be safely relied on, and having perused such evidence carefully, we formed the view that this is one of those exceptional cases in which this Court, as an appellate tribunal, is entitled to reverse a finding on credibility of a trial Court (see, in this respect, inter alia, *Economides v. Zodhiatis*, 1961 C.L.R. 306, *Foumaris v. The Republic*, (1978) 2 C.L.R. 20 and *Katsiamalis v. The Republic*, (1980) 2 C.L.R. 107). 5

In order to show that it was really dangerous to rely on the evidence of the complainant it is, we think, sufficient to point out that in her evidence she relates conversations with the appellant even though it is indisputable that the appellant does not understand Spanish and the complainant speaks only Spanish and yet, according to her evidence, they were conversing with each other; and what they were saying allegedly to each other is, in this case, most material as regards the version of the appellant that whatever took place between him and the complainant was with her consent. 10 15

Counsel for the appellant has argued, also, that it was not proper in this case to find that lies which were told by the appellant in his statement to the Police, when he was interrogated on 24 July 1986, amounted to corroboration of the evidence of the complainant and counsel has referred, in this connection, to, inter alia, to *R. v. Lucas*, [1981] 2 All E.R. 1008, 1011, *R. v. Dowley*, [1983] Crim. L.R. 168, *R. v. West*, [1984] Crim. L.R. 236 and *R. v. R.*, [1985] Crim. L.R. 736. 20 25

In the light of the circumstances of this case and of the case-law referred to, as above, by counsel for the appellant, we are, indeed, of the view that, in the present instance, it was not safe for the trial Court to treat, in a general and sweeping manner, all lies told by the appellant to the Police as amounting to corroboration of the evidence of the complainant. 30

Because of all the foregoing we decided that the conviction of the appellant should be set aside, and moreover we are not satisfied that this is a proper case in which to apply the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, and to hold that no substantial miscarriage of justice has occurred (see, inter alia, in this respect, *Nicolaou v. The Police*, (1978) 2 C.L.R. 60, *Khadar v. The Republic*, (1978) 2 C.L.R. 132, *Zisimides v. The Republic* (1978) 2 C.L.R. 382, *Stylianou v. The Republic*, (1979) 2 C.L.R. 109 and *Georghiades v. The Police*, (1981) 2 C.L.R. 155). 35 40

In the result, this appeal is allowed and the conviction of the appellant, and the sentence passed upon him as a result of it, are hereby set aside.

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*Appeal allowed.
Conviction and Sentence
set aside*