

1988 January, 15

(PRIANTAFYLLOIDES P. STYLIANIDIS (ORIS II))

ANTONIS FANIEROS,

Appellant

THE REPUBLIC

Respondent

(Criminal Appeal No 4753)

Credibility of witnesses — Finding as to — Interference with on appeal — Justified in the circumstances of this case

Evidence — Standard of proof — Lurking doubt as to guilt — Acquittal of accused

- 5 *Sentence — Possession of explosives (4 dynamite bombs on one occasion and 2 dynamite bombs on another) — Four years imprisonment*

10 The appellant was found guilty on various counts for inciting others to place explosive substances and for possession of explosives, i.e. two dynamite bombs on one occasion and four such bombs on another occasion

15 He was sentenced to five years' imprisonment on each of the counts relating to incitement (sentences to run concurrently), whilst no sentence was passed in respect of the possession of the explosives

The prosecution witnesses, who were believed by the trial Court were themselves arrested at first in connection with the aforesaid offences of incitement, but denied any knowledge thereof, whilst much later they decided to divulge the aforesaid incitements

20 *Held* (1) This is one of the rare occasions when interference by this Court with a finding concerning credibility of witnesses is justified. This Court has been left with a lurking doubt as regards the guilt of the appellant for the incitements

25 (2) However, this Court has not been persuaded that the part of the evidence of one of the said witnesses relating to the possession of the explosives was equally unsafe.

(3) Four years' imprisonment are hereby imposed on each of the counts relating to explosives, sentences to run concurrently as from 25 3 1986

Appeal allowed to the above extent Sentences as aforesaid

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Cases referred to

HjıSavva v The Republic (1976) 2 C L R 13

Kouppis v The Republic (1977) 2 C L R 361,

Fournans v The Republic (1978) 2 C L R 20

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

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

Katelans v The Police (1980) 2 C L R 230,

Onisiforou v The Police (1987) 2 C L R 261

Appeal against conviction and sentence.

Appeal against conviction and sentence by Antonis Fanieros who was convicted on the 5th June, 1986 at the Assize Court of Larnaca (Criminal Case No 5030/86) on eight counts of the offence of incitement of other persons to place explosives contrary to section 370(a) of the Criminal Code, Cap 154 and on two counts of the offence of unlawful possession of explosives contrary to section 4(4)(δ) of the Explosive Substances Law, Cap 54 (as amended by Laws 21/70 and 27/78) and was sentenced by Papadopoulos P D C , Eliades and Arestis, D JJ to five years' imprisonment on the incitement counts, with no sentence being passed on the other two counts, the sentences to run concurrently

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K Savenades with C Savenades, for the appellant

M Kyprnanou, Senior Counsel of the Republic with A Vassiliades and R Vrahimi - Petridou (Mrs), for the respondent

Cur adv vult

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TRIANTAFYLLIDES P read the following judgment of the Court The appellant was found guilty, by an Assize Court in Lamaca, on 5 June 1986, of six offences of incitement of other persons to place explosive substances at the house and the motor-car of a District Judge in Lamaca (on counts 1, 2, 3, 4 and 7 in the information), of three offences of incitement of other persons to

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place explosive substances at the premises of two night clubs and a butcher's shop and motor-car in Lamaca (on counts 8, 9 and 10) and he was, also, convicted of two offences of unlawful possession of explosives, namely two dynamite bombs on one occasion and
5 four dynamite bombs on another occasion (on counts 5 and 11).

He was sentenced to concurrent terms of imprisonment for five years in respect of each one of the offences of incitement (on counts 1, 2, 3, 4, 7, 8, 9, and 10 in the information) and no sentence was passed upon him in respect of the offences of
10 possessing explosive substances (on counts 5 and 11) as such offences were found to be directly related to the offences of incitement.

The convictions of the appellant were primarily based on the evidence of three prosecution witnesses, namely Panayiotis Christou (P.W.19), Pantelis Photiou (P.W.26) and Michael Nicolaou (P.W.30).
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The convictions of the appellant on counts 4 and 7 were based on the evidence of prosecution witness Panayiotis Christou. The convictions of the appellant on counts 3, 5, 8, 9, 10 and 11 were
20 based on the evidence of prosecution witness Pantelis Photiou; and the convictions of the appellant on counts 1 and 2 were based on the evidence of prosecution witness Michael Nicolaou.

Without needing to go into any great detail we have to say that we have been driven irresistibly to the conclusion that the quality
25 of the evidence of the aforementioned three prosecution witnesses was such that they could not be safely relied on in convicting the appellant of the offence of incitement.

All of them at various stages were arrested in respect of offences which were closely related to the incitements by the appellant for which they testified and they denied any knowledge whatsoever
30 of their involvement in any way in such matters and definitely did not mention the incitements on the part of the appellant. Yet, suddenly and allegedly spontaneously all three of them decided later, and very belatedly, to divulge the aforesaid incitements,
35 some of which related back to quite long ago.

We appreciate that the appellant was being charged with very serious crimes, especially as some of them related to incitements to commit heinous crimes against a member of the judiciary, but this cannot, in any way, be treated as lowering the standard of the
40 proof necessary to establish the guilt of the appellant.

On the basis of the whole material before us we have no hesitation in holding that we have been left with a lurking doubt as regards the guilt of the appellant regarding the safety of his convictions in connection with the offences of incitement (see, inter alia, in this respect *HjiSavva v The Republic*, (1976) 2 C L R 13, *Kouppis v The Republic*, (1977) 2 C L R 361, *Fournaris v The Republic*, (1978) 2 C L R 20, *Zisimides v The Republic*, (1978) 2 C L R 382 *Katsiamalis v The Republic*, (1980) 2 C L R 107 and *Katelaris v The Police*, (1980) 2 C L R 230)

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This is indeed one of those rare occasions on which we are justified as an appellate tribunal to interfere with a conviction based on findings of credibility made by the trial court (see, in this respect *Onisiforou v The Police* (1987) 2 C L R 261 and the case-law referred to in the judgment in that case)

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As regards, however the two convictions of the appellant for possessing explosives, namely two dynamite bombs on one occasion and four dynamite bombs on another and though we have treated as unsafe the evidence of prosecution witness Pantelis Photiou in relation to the conviction about offences of incitement which were based on his evidence, we have not been persuaded and the burden laid upon the appellant to do so - that the part of the evidence of the said prosecution witness which established that the appellant was seen on two occasions by the said prosecution witness to be in possession of the aforesaid dynamite bombs was equally unsafe and, therefore, should not have been relied on in convicting the appellant in respect of the offences of possession of explosives

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We, consequently, allow the appeal against the convictions of the appellant on all counts relating to the incitement charges and we dismiss the appeal in relation to the explosive substances charges and uphold the convictions of the appellant on counts 5 and 11 in the information

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We set aside the sentence of five years' imprisonment which was imposed on the appellant in respect of the offences of incitement and as no sentence was imposed by the trial Court in relation to the offences of possessing explosives we propose to do so now after hearing what counsel for the appellant has to say in mitigation

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Mr C Savenades was heard as regards sentence

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Court: In relation to the two offences of possessing explosives we sentence the appellant to terms of imprisonment of four years to run concurrently as from 25 March 1986 when the appellant was taken into custody.

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Appeal against incitement offences allowed. Appeal against counts of possessing explosives dismissed.