1988 May 3

(MALACHTOS DEMETRIADES PIKIS JJ.)

MICHALIS PAPACHRYSOSTOMOU

Appellant

v.

THE POLICE,

Respondents

(Criminal Appeal No. 4979)

Criminal Procedure — The Criminal Procedure Law, Cap. 155, section 40 — Joinder of offences — Discretion to order separation — Evidence of complainant (wife of accused) in one count inadmissible as regards the second count concerning another complainant (her father) — In the circumstances the trial Judge correctly exercised the discretion in not ordering separate trial

Evidence — Corroboration — Witness who has an interest to serve — The expression means a witness who, though not an accomplice, is on the border line of an accomplice

Grievous harm — The Criminal Code, Cap. 154, section 4 — Fracture of renal bone — Correctly treated as constituting grievous harm

Judgments — Reasoning of — No need for uniformity — Not necessary for the Court to reproduce the evidence or refer to every detail of it

Evidence — The Evidence Law, Cap. 9, section 19 as amended by Law 86/86 — Admission thereunder — Purpose of — Appellant, who was charged with causing grievous bodily harm, admitted that X-rays on complainant showed fracture of renal bone — In the absence of any suggestion to the contrary, the conclusion that the fracture was the result of the assault was inevitable

The appellant was convicted for (a) Unlawfully causing grievous harm to his father-in-law, and (b) Assault occasioning actual bodily harm to his wife.

The appellant lives apart from his wife. He has custody of their two children. The wife has a right of access to the children regulated by a

Court order On the day, when the wife, in virtue of such order, was entitled to take the children, she went, accompanied by her father, in order to meet her husband and take the children The appellant refused to give up the children on account of the presence of his father-in-law An argument ensued and, finally, the appellant attacked his wife in a ferocious manner The wife's father tried to free his daughter by using an iron bar, but the appellant overpowered him and, then, attacked him with the same iron bar

Counsel for the appellant put forward various complaints, namely

(a) That the trial Court wrongly refused to order separate trials on each of the counts in view of the fact that the wife's evidence against the appellant on the count relating to the injury of her father was not admissible

(c) That the trial Court wrongly treated the medical evidence as corroborative of the evidence of the complainants

(c) That the Court failed to warn itself of the danger of acting without corroboration on the evidence of the complainants, who had an interest to serve

(d) That there was no evidence that the fracture of the renal bone of appellant's father-in-law was due to the assault

(e) That the fracture of the renal bone does not constitute a «grievous harm», and

(f) That there were various discrepancies in the summing up

It must be noted that there had been an admission under section 19 of the Evidence Law, Cap 9, as amended by Law 86/86 to the effect that X-Rays taken at the Nicosia General Hospital on the day following the incident, revealed fracture of the renal bone of appellant's father-in-law That was why the prosecution did not call any evidence as to the fracture

Held, *dismissing the appeal*

(1) Section 40 of the Criminal Procedure Law permits the joinder of any number of offences The Court retains a discretion and may disallow the joinder if the interests of justice so warrant The observations in *Oueiss v Republic* (1987) 2 C L R 49 as to the remoteness of the likelihood of prejudice to appreciate the evidence in its proper perspective, where there is no jury, apply with equal force to the likelihood of prejudice resulting from the admissibility of evidence on one count that is inadmissible on another The joinder of count 1 and count 2 in the same charge was perfectly warranted in this case At the end of the day the trial Judge specifically reminded

himself of the fact that the evidence of the wife was inadmissible on the count for grievous harm.

(2) «Corroboration» is a term of art. It does not of necessity correspond to the Greek term «ενισχυτική μαρτυρία» used by the trial Judge. The Greek term may, also, mean «supportive» or «confirmatory» evidence. This is the sense in which the trial Judge used the aforesaid term.

(3) As it was held in *Mousoulides v. Republic* (1983) 2 C.L.R. 336 *the interest necessary to warrant extra caution necessary for the* evaluation of the evidence of such a witness must be «of kind .... associated with the success of the criminal venture with which the accused are charged. There must be evidence tending to suggest complicity on his part in the commission of the crime though not such as to render him an accomplice in the commission of the offences». Every witness has, in a sense, an interest to serve, namely, an interest of being believed. However, what is meant by witness having an interest to serve is a witness, who, though not an accomplice, is on the border line of an accomplice.

(4) The object of s.19 of the Evidence Law 86/86, is to make provision for the admission of relevant facts in the interest of the expeditious conduct of criminal proceedings. The object of the admission in this case was to obviate the need for oral medical evidence as to internal injuries suffered by the complainant. In the light of such admission and the absence of any suggestion to the complainant that the fracture of his nose had originated from any other cause, it was inevitable for the Court to conclude as it did.

(5) Grievous harm is comprehensively defined by s.4 of the Criminal Code and includes, inter alia, any serious injury to any external or internal organ, membrane or sense. A fracture of the renal bone is, by its very nature, a serious injury. This Court cannot uphold the submission of counsel on this score either.

(6) A judgment may be reasoned in a variety of ways. There is no rule as to uniformity in the style of judgment. The need to reason a judgment does not oblige the Court to reproduce the evidence or refer to every detail of it.

The summing up of this case was perfectly adequate.

Appeal dismissed.

Cases referred to:

R. v. Baskerville, 12 Cr. App. Rep. 81;

Varnava v. The Police (1973) 2 C.L.R. 317;

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

Oueiss v The Republic (1987) 2 C L.R 49;

Mousoulides v. The Republic (1983) 2 C.L.R. 336;

R. v. Pratter, 14 Cr. App. Rep. 83;

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

Papadopoulos v. Stavrou (1982) 1 C.L.R. 321;

Foumides v. The Republic (1986) 2 C.L.R. 73;

Psaras and Another v. The Republic (1987) 2 C.L.R. 132.

Appeal against conviction.

Appeal against conviction by Michalis Papachrysostomou who was convicted on the 2nd February, 1987 at the District Court of Larnaca (Criminal Case No. 2587/87) on one count of the offence of causing grievous harm contrary to section 231 of the Criminal Code Cap. 154 and on one count of the offence of occasioning actual bodily harm contrary to section 243 of the Criminal Code and was sentenced by Arestis, D.J. to six months' imprisonment on count 1 and to four months' imprisonment on count 2.

M. Cleopas with G. L. Savvides, for the appellant.

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

MALACHTOS J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: Michael Papachrysostomou appeals against his conviction by the District Court of Larnaca on two counts - namely,

(a) Unlawfully causing grievous harm to Costas Sideras, his father-in-law (contrary to s.231 of the Criminal Code - Cap.154) and

(b) Assault occasioning actual bodily harm to Miranda Papachrysostomou, his wife (contrary to s.243 of the Criminal Code - Cap.154).

The accused had denied the charges and maintained that at no stage did he assault either his wife or his father-in-law. On the contrary, he was the victim of separate attacks by both of them in

the course of which he did no more than attempt to ward off their assaults. The injuries of the complainants were occasioned in the process of defensive action to stem the attacks. For their part the complainants testified that they were ferociously assaulted by the appellant after an altercation between the appellant, on the one hand and, his wife and her father, on the other, respecting the exercise of the right of the wife to access to her children.

There was a lot of wrangling between the spouses as to the care and control of their two infant daughters following the break-up of their marriage in February, 1985. By virtue of an order of the District Court of Nicosia, care and control of the children was entrusted to the appellant subject to a right of access to the wife once a week (every Wednesday), when the children would be in her care between 1 p.m. and 9 p.m. The spouses lived apart - the appellant at Athienou and his wife at Nicosia. Following a prior arrangement, Miranda Papachrysostomou travelled to Athienou, at a prearranged location outside the village, to collect her children. The wife was accompanied by her father. The appellant objected to his presence and on that account refused access to the mother. At the trial he gave as reason for his objection, his fear that the presence of anyone other than his wife might create an unwelcome precedent. In future, he said, his wife might come to collect the children accompanied by a boyfriend, a statement severely criticised by the trial Judge. Instead of allowing his wife to take the children, he drove away in the direction of the village. He was followed by the car driven by his father-in-law in which his wife travelled as passenger. When the appellant brought his car to a standstill, somewhere within the village, they stopped behind. The wife alighted and approached the car of the appellant with a view to taking the children. The children were seated at the back of the car of the appellant with the rear doors locked. When Miranda found out that the rear doors were locked she made an effort to come close to the children by opening the front passenger's door. The appellant resisted the attempt and, eventually, alighted from the car.

The facts founding the charges occurred in the process of resistance to the demand of Miranda that she be allowed access, and the attack allegedly mounted by the appellant, first against his wife and then against his father-in-law. In the contention of the wife the appellant, after alighting, embarked on a fierce attack on her as a result of which she suffered injuries on the left part of the

forehead and the occipital region of the head that necessitated stitching, and a bruise on the left zygomatic arrow. In the course of the attack the appellant seized her from the hair and banged her head against a nearby street-pole. Her father felt impelled to stop the attack; he picked up an iron bar that lied on the ground and armed with it he attacked the appellant to let go of his daughter. He was soon overpowered and disarmed by the appellant - a person of powerful physique. Thereupon, the appellant went on the attack and assailed Costas Sideras with the same iron bar he had seized from his possession, as a result of which the latter suffered a number of head and facial injuries that necessitated stitching. In consequence of the injuries the renal bone was fractured.

Subject to a minor reservation the trial Court accepted the evidence of the complainants whereas it rejected that of the appellant. Not only the version of the appellant was hard to accept in the context of the realities of the case, but the Court observed it conflicted with medical findings, too. On the other hand, the medical evidence tended to reinforce, in the judgment of the Court, the testimony of each one of the complainants inasmuch as the injuries were, on the whole, consistent with the blows allegedly delivered to them by the appellant.

Counsel for the appellant challenged the verdict as factually and legally unsound. The refusal of the application for a disjoinder of the trial on counts 1 and 2, in view of the inadmissibility of the evidence of the wife on the count preferred against her father led, as counsel argued, to a mistrial because of its unavoidable prejudicial effect on the outcome of the case.

Secondly, the Judge failed to administer a warning respecting the risk inherent in acting on the evidence of the complainants given the interest they had in the outcome of the proceedings. The appellant himself had lodged complaints with the Police against them. The treatment, on the other hand, of the medical evidence as corroborative of the testimony of the complainants was erroneous in view of the elements necessary to found corroboration - analysed in the time - honoured decision of *R. v. Baskerville.**

Thirdly, the injuries suffered by Costas Sideras did not amount

* *(12 Cr. App. Rep. 81).*

to grievous harm, according to the definition of such harm by s.4 of the Criminal Code and, the analysis of the concept of grievous harm by the well - known work of *Glanville Williams - Text Book of Criminal Law,* 1st ed., p.153. More significantly still the finding of the Court that Costas Sideras suffered a renal fracture, as a result of the injuries inflicted upon him by the appellant, was unwarranted by the material before the Court. The suggestion is that the admission made on behalf of the appellant as to a renal fracture, did not imply that the fracture had been suffered in the course of the incident under review; notwithstanding external signs of injury to the nose.

In addition to the misdirections enumerated above, the verdict was also liable to be set aside because of misappreciation of the evidence or, more accurately, failure to appreciate it in a correct perspective, the failure going to the root of the conviction rendering it unreliable or unsatisfactory in the sense of *Varnava v. The Police**. Proper appreciation of the evidence could not but leave a lurking doubt in the mind of the Court, such as was entertained in *Foumaris v. Republic***, causing the Court to quash the conviction. Section 40 of the Criminal Procedure Law permits the joinder of any number of offences. The amenity to effect such joinder is far greater than that permitted by the *English Indictments Act 1915* (s.4 r.3 of the First Schedule to the Act) in that the law does not postulate as a prerequisite that the offences joined form a series. The Court retains a discretion and may disallow the joinder if the interests of justice so warrant. When moved to order separate trials on counts 1 and 2, the learned trial Judge did advert to the principles governing the exercise of his discretion, to order such severance in order to guard against possible prejudice to the appellant arising from the admissibility of evidence of one count that is inadmissible on another. He derived guidance for the ascertainment of the relevant principles bearing on the exercise of his discretion, from the following passages of *Criminal Procedure in Cyprus****:

> «The mere fact that evidence inadmissible on one count of the indictment may be admissible in respect of another count, is not in itself a ground for ordering separate trials but may [illegible] d a ground where it would be difficult, in this course of a

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* *((1973) 2 C.L.R. 317).*
** *((1978) 2 C.L.R. 20).*
*** *(Pages 57-58 respectively)*

summing-up, to earmark the evidence and its bearing on individual counts, posing risk for the jury, when considering the evidence, to be unable to disregard evidence inadmissible on one count but properly admitted in relation to another.

If this is a legitimate course for a trial before a jury, a fortiori, it may be adopted with more immunity before a Judge or Judges sitting without a jury, as it can be confidently expected, given their training and experience, to be in a position to draw the line, where such a line should be drawn, in the interests of justice. In any event, the joinder of such counts, even where improper, will be no ground for quashing a conviction where such misjoinder has caused no prejudice to the accused.»

The appreciation of inherent differences between trial before professional judges and trial before a judge and jury reflected in the above passage, is born out by the recent decision of the Supreme Court in *Oueiss v. Republic**. The likelihood of prejudice occurring on account of failure of the Court to appreciate the evidence in its proper perspective is, it was pointed out, remote in Cyprus in view of the professional status of the judges of fact, expected by training and experience to appreciate the case in its true evidential perspective. The above observations were made with regard to the likelihood of prejudice occurring from the joinder of offences and the admissibility of evidence against one accused which is inadmissible against another. For the same reasons they apply with equal force to the likelihood of prejudice resulting from the admissibility of evidence on one count that is inadmissible on another.

The joinder of count 1 and count 2 in the same charge was perfectly warranted in this case. The facts founding the two charges were inextricably connected and formed part of a series that was virtually impossible to seggregate without damage to the fabric of the case founding either count. The disjoinder would not only cause multiplicity of proceedings but more importantly still it would make it difficult for the Court to appreciate the evidence on either count in a correct factual perspective. At the end of the day the learned trial Judge specifically reminded himself of the fact that the evidence of the wife was inadmissible on the count for grievous harm and in point of fact referred to the evidence of the two complainants separately, in order to define the evidential framework of the case for the prosecution on each of the two

* *(1987) 2 C.L.R 49, 56.*

counts. Hence we dismiss the appeal to the extent that it is directed against the joinder of offences and the refusal of the Court to separate them and direct separate trials.

Witness with an interest to serve the position of the complainants - Corroboration:

In *Mousoulides v. Republic** the Court reviewed the position with regard to witnesses with an interest to serve and the caution necessary in the evaluation of their evidence.** It was pointed out that not every witness who may harbour an ulterior motive can be regarded as a witness with an interest to serve Furthermore, such a witness should not be assimilated to an accomplice nor should an identical warning to that warranted in the case of the evaluation of the evidence of an accomplice be given. The interest necessary to warrant extra caution necessary for the evaluation of the evidence of such a witness must be «of a kind ..... associated with the success of the criminal venture with which the accused are charged. There must be evidence tending to suggest complicity on his part in the commission of the crime though not such as to render him an accomplice in the commission of the offences.»

It is unnecessary to debate the matter further for under no conceivable circumstances could either complainant qualify as a witness with an interest to serve. Certainly they had an interest in being believed by the Court as every complainant has in a criminal case. But that does not render them witnesses with an interest to serve. They had, to make it clear, no interest in their being assaulted by the appellant or in the success of that venture. On the contrary, they were the victims of it. Learned counsel failed with respect, to make a clear distinction between the interest that every witness has in being believed by the Court, not least as a matter of self respect to himself, and the nature of the interest necessary to bring him on the border-line of an accomplice.

Another criticism of the judgment made by counsel affecting corroboration, is directed at the finding of the Court that the evidence of the complainants «ενισχύεται» by the medical evidence. The Greek expression «ενισχυτική μαρτυρία» is not necessarily synonymous with corroborative evidence - a term of

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* *(1983) 2 C L R 330*

** *(See, R v Pratter, 14 Cr App Rep 83, and Zisimides v Republic (1978) 2 C L R 382)*

art in English legal terminology. The Greek expression is equally apt to convey the notion of confirmatory or supportive evidence. In our judgment it was in this sense that the expression was used. Furthermore, the Judge did make it clear that he was left in no doubt as to the veracity of the complainants and did record his readiness to act on their testimony be it in the absence of any other reinforcing evidence. The medical evidence, on the other hand, tended to support the version of the complainants as to the causation of the injuries and equally significantly was inconsistent with the evidence of the appellant on the same subject.

Before leaving this part of the case we may commend to trial courts that whenever they use expressions that are terms of art in legal phraseology, they must take pains to explain whether the expression is used in that sense or in its popular meaning.

The injuries sustained by Costas Sideras - Classification for the purposes of the Criminal Code:

An admission was made before the trial Court under the provisions of s. 19 of the Evidence Law - Cap. 9 (as amended by Law 86/86) to the effect that X-rays taken at the Nicosia General Hospital on the day following the incident, revealed fracture of the renal bone of Costas Sideras. Counsel for the appellant submitted that the admission did not connote that the fracture had been caused by the blows found to have been inflicted by the appellant on the complainant; despite the presence of external marks of injury to the nose. Because of the admission the Prosecutior omitted to adduce evidence relevant to the age of the fracture of the renal bone. The object of s.19 of the Evidence Law 86/86, is to make provision for the admission of relevant facts in the interest of the expeditious conduct of criminal proceedings. The facts admitted must be relevant to matters in issue. The object of the admission in this case was to obviate the need for oral medical evidence as to internal injuries suffered by the complainant in the course of the incident under consideration. In the light of the admission made and the absence of any suggestion to the complainant that the fracture of his nose had originated from any other cause, it was inevitable for the Court to conclude that it was a direct incident of the violence applied by the appellant to the person of the complainant and find as a fact that Costas Sideras suffered a fracture of the renal bone. Then, counsel argued that the injuries of Costas Sideras did not qualify as grievous harm. Grievous harm is compehensively defined by s.4 of the Criminal Code and includes, inter alia, any serious injury to any external or internal

organ, membrane or sense.

Counsel acknowledged, on a consideration of English caselaw that, whether a particular injury is sufficiently serious to qualify as grievous for the purposes of a corresponding provision of English legislation, is a matter for the jury. It would be difficult to argue that a jury, upon a proper direction as to the meaning in law of grievous harm, could not find that a fracture of the renal bone amounted to grievous harm. A fracture of the renal bone is, by its very nature, a serious injury. We cannot uphold the submission of counsel on this score either.

The Evidence - Findings of fact:

Counsel for the appellant made a wide ranging criticism of the summing-up of the evidence and the findings of the Court. He drew attention, in particular to what, in his submission, amounted to contradictions or serious discrepancies between the evidence of Costas Sideras and two other witnesses for the prosecution - Mr. and Mrs. Gavriel - that were not duly noticed or pondered by the trial Court. Furthermore, the medical evidence did not tally with the testimony of the complainants, as the Court found but, on the contrary, it was hard to reconcile it with their evidence; especially the absence of injuries from parts of the body that came under attack. The lapse of memory admittedly suffered by Mr. Sideras after his injuries (the result of a mild concussion) and its inevitable impact upon his testimony went virtually unnoticed; impaired memory, counsel said, invariably affects the quality of the evidence of a witness; that constitutes yet another reason that casts doubts on the satisfactoriness of the verdict of the Court.

Mr. Savvides candidly acknowledged he had an uphill path to tread, in seeking to persuade the Court to interfere with the findings of the Court respecting the credibility of witnesses. Counsel is right in his appreciation of the position in law respecting credibility and primary findings of fact. It is worth recalling what was said in *Papadopoulos v. Stavrou**. The same principles underlie the approach of the Court of Appeal to the review of credibility of witnesses and the making of primary facts in a criminal case (*Foumides v. Republic* (1986) 2 C.L.R. 73, 91).

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* *(1982) 1 C.L.R. 321, 325 - lines 16-23:*

«In reviewing the findings and ultimate judgment of the trial court, an appellate court must never overlook that the trial court, living through the drama of a case and following the unfolding of the rival contentions before it, is in a unique position to evaluate the evidence in its proper perspective. The live atmosphere of the trial court is pre-eminently the forum for the elucidation of the evidence and the assessment of its impact.»

A judgment may be reasoned in a variety of ways. There is no rule as to uniformity in the style of judgment. Any such rule would stiffle the individual approach of different members of the Judiciary to the reasoning of their judgment, so often beneficial to the development of the law. The need to reason a judgment does not oblige, as we pointed out in *Psaras and Another v. Republic,* * the Court to reproduce the evidence or refer to every detail of it. What is required of a court of law «..... is that reasons should be given for its decisions and those reasons should relate to the law applicable and be referable to the evidence given in the cause, so that it may appear that the verdict is not merely the reaction of the Court to the dispute but warranted by the law applicable and the evidence adduced.» The summing-up of the evidence in this case was perfectly adequate whereas the findings of the Court were founded on what we conceive to be robust reasoning.

Nothing said before us persuades us that there is any room to interfere with the findings of the trial Court affecting credibility or the findings of primary facts resting thereupon.

The appeal is dismissed.

* *(1987) 2 C.L.R. 132.*