

Michalakis Savva Karaolides - - - - - Appellant

v.

The Queen - - - - - Respondent

FROM

THE SUPREME COURT OF CYPRUS

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REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE  
13TH APRIL, 1956

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*Present at the Hearing:*

LORD GODDARD (LORD CHIEF JUSTICE OF ENGLAND)  
LORD OAKSEY  
LORD TUCKER  
LORD KEITH OF AVONHOLM  
LORD SOMERVELL OF HARROW

[*Delivered by* LORD OAKSEY]

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This is an appeal by special leave from a judgment of the Supreme Court of Cyprus (Zekia and Zannetides, JJ.) dismissing the appellant's appeal from the judgment of the Assize Court of Nicosia (Hallinan, C.J., Pierides, P.D.C., and Ekrem, D.J.) whereby the appellant was convicted of the murder of a police constable Michael Poullis on 28th August, 1955, and condemned to death.

The nature of the jurisdiction which their Lordships' Board exercises in criminal cases has long been settled. In the case of *Lejzor Teper v. The Queen* [1952] A.C. 480 at p. 491 Lord Normand delivering the opinion of the Board said "It is now necessary to consider whether the admission of" certain evidence "was . . . 'something which deprived the accused of the substance of fair trial and the protection of the law' (*Ibrahim v. The King* [1914] A.C. 599, *Renouf v. Attorney-General for Jersey* [1936] A.C. 445, *Dharmasena v. The King* [1951] A.C. 1). It is a principle of the proceedings of the Board that it is for the appellant in a criminal appeal to satisfy the Board that a real miscarriage of justice has occurred. In *Dal Singh v. The King Emperor* (1917) L.R. 44 I.A. 137, it was observed in a case where this Board had no ground for doubting that the appellant had been properly convicted, that the mere admission of incompetent evidence, not essential to the result, is not a ground for allowing an appeal against conviction. In the same case it was stated that "the dominant question is the broad one whether substantial justice has been done" and that in the particular case the question was "whether looking at the proceedings as a whole, and taking into account what has properly been proved, the conclusion come to has been a just one".

It is necessary for their Lordships therefore to consider whether looking at the proceedings as a whole and taking into account what has been properly proved the conclusion come to has been a just one.

On Sunday morning the 28th August, 1955, there was a political meeting of the "old trade unions" at the Alhambra Hall in Ledra Street, Nicosia. The meeting finished at about midday. At about 12.25 p.m.

Police Constable Poullis, who was on duty in plain clothes, was standing in Ledra Street at the entrance to the Women's Market, which is not far from the Alhambra Hall, when three men walked out of the Women's Market and surrounded him. One of the three men fired three shots. Poullis staggered forward a few paces and fell dead. The men ran away. The man who fired the shots picked up a bicycle from the pavement some yards up Ledra Street as he ran. He first pushed and then rode the bicycle. When he came to the junction of Ledra Street and Kykko Avenue a member of the public threw a bicycle in his path, and thus knocked him off the bicycle. The murderer abandoned the bicycle, ran down Kykko Avenue, and disappeared into a side turning. The case for the prosecution was that this man was the appellant.

The evidence of the eye-witnesses called at the trial was conflicting. There were in all eight eye-witnesses or alleged eye-witnesses, four called by the prosecution and four by the defence. Of the prosecution witnesses the first, Hussein Mehmet Djenkiz, a taxi driver, claimed to have seen the murder, and identified the appellant as the murderer both in Court and at an identification parade held by the police on the 4th September, 1955. His evidence was however rejected by the Court.

Of the three remaining prosecution eye-witnesses, Christodoulos Michael, the person who had thrown his bicycle in front of the escaping murderer, did not identify the appellant as the murderer at the identification parade, and at the trial said in cross-examination that the appellant was not the murderer but later said "he was not sure".

The other two prosecution eye-witnesses were both connected with the police. Mehmet Ismael was a police constable and Feyzi Derekoglou a special constable. Both these witnesses identified the appellant at the identification parade and in Court.

The defence called four eye-witnesses who did not identify the appellant. The fourth witness was the appellant's brother-in-law, Phidias Christodoulou. Phidias's story which was corroborated to some extent by a cafe proprietor Costas but was expressly disbelieved by the Assize Court was that the appellant had lent him the appellant's bicycle and that he had left it outside the Alhambra Hall and that seeing it picked up by the murderer and ridden off he had walked to the house of Damianos the appellant's uncle where he believed the appellant to be, taking 15 to 20 minutes on the journey, took the appellant on one side and warned him that the bicycle had been taken by the murderer and was then in the hands of the police. The appellant upon receiving this information without consulting or speaking to his uncle Damianos or any of those with whom he had been sitting since about 11 a.m., immediately went into hiding with a friend whose name he refused to disclose and after some six days in hiding on 3rd September, 1955, as arranged by his friend he was driven away in a motor car by a man named Andreas Christoudes who so the appellant said threw a piece of paper into his pocket telling him to keep it and he would tell him later what it was. The piece of paper bore these words:—

"Zedro,

I am sending you the bearer of these presents and look after him well. He is a good boy and a patriot to the point of self sacrifice, you can trust him.

No one should know about his identity.

AVEROFF."

The appellant's evidence continued as follows:—

"It was a piece of folded paper. Q. Did you read it? A. No I did not read it. Q. What happened to the driver? A. We went as far as Chatos Village. Q. Up to the time you reached Chatos did any of you say anything about the piece of paper which he put in your pocket? A. No, he said only "I will take you somewhere and then pull up for you to come down. There you will be met by somebody wearing a blue shirt. He will greet you in the following words:

"Hallo koumbare; are you a Nicosia man". And after he tells you these words you will answer him 'Yes'. Then he will ask you have you anything for me. Do you know a certain Averoff? Then to that question I should have answered 'Yes' and would hand him that piece of paper and that I should have followed him."

Christoudes and the appellant in the car then approached a police road block and the appellant got out of the car and walked through the fields to avoid the police but was later arrested.

On the 4th September, 1955, the appellant was put up for identification and as previously stated was identified by the witnesses Ismael and Derekoglou. The identification parade was properly carried out and no criticism of it has been made. Complaint has however been made that the learned Chief Justice at the trial refused to allow certain questions to be put to Derekoglou on the ground that they were of a psychological nature dealing with the point of time at which the witness realised that the appellant whom he was chasing was a man he had seen before. In their Lordships' view there is no substance in this objection.

The conduct of the police was however criticised by the Assize Court for not recording a statement made to them by Damianos which according to Damianos' account had told the police on 29th September that the appellant was at his house from 11 a.m. to 1.30 p.m. on the day of the murder. Police Inspector Kaminarides however did not agree that Damianos had reported this but said that Damianos had said he did not know where the appellant was but that he came to Damianos' house at 9 a.m. and left at 11.30 a.m. and that it was untrue that Damianos said the appellant left at 1.30 p.m.

It is important to observe that at no time until the trial on 24th October, 1955, did the appellant allege that at the time of the murder he had been at his uncle's house.

At the trial a number of documents were given in evidence with a view to connect the appellant with the terrorist activities of a certain part of the population of Cyprus and to explain the word Zedro on the document Exhibit 8.

The admission of this evidence was the principal ground of the appeal to the Supreme Court of Cyprus and to their Lordships' Board.

Their Lordships agree with the submission of the appellant's Counsel that these documents with the exception of Exhibit 8 were inadmissible, not merely some of them as the Supreme Court of Cyprus has held, but as already indicated the appellant has still to satisfy the Board that their admission turned the scales against him and thereby resulted in a miscarriage of justice. This he has failed to do. In their Lordships' opinion the inadmissible evidence added little, if anything, to that which was clear from the rest of the evidence, viz., that the murder was a political one and that the appellant was in flight seeking the protection of persons willing to hide fugitives from justice. The fact that there had been a number of crimes of violence committed by terrorists for political ends was a matter of common knowledge and it was quite immaterial whether they had been committed by E.O.K.A. members or other persons. In this connection, however, the appellant had admitted in cross-examination that he suspected those protecting him might be connected with E.O.K.A.

Their Lordships have carefully considered the suggestion that a young man hearing that his bicycle had been found at the spot where a terrorist murder had been committed and remembering as he says he remembered that a bomb had exploded at the office where he worked might have gone into hiding and afterwards accepted the protection of a terrorist organisation without having been in any way connected with the crime. This was a matter for the consideration of the members of the Assize Court who must have rejected it, and their Lordships do not consider that its rejection could have been caused or influenced by the inadmissible evidence.

In view of the identification of the appellant, of his conduct in going into hiding and of the finding of the Assize Court who saw and heard Phidias and the witnesses who spoke to the appellant's alibi, their Lordships are of opinion that a miscarriage of justice has not been established and that the conviction must be affirmed.

For these reasons their Lordships have humbly advised Her Majesty that the appeal ought to be dismissed.



In the Privy Council

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MICHALAKIS SAVVA KARAOUIDES

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THE QUEEN

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[DELIVERED BY LORD OAKSEY]

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