Privy Council Appeal No. 13 *of* 1956

Andreas Charilaou Zakos and another - - - - *Appellants*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CYPRUS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH JULY, 1956

Present at the Hearing:

VISCOUNT SIMONDS
LORD OAKSEY
LORD TUCKER
LORD COHEN
LORD SOMERVELL OF HARROW

[*Delivered by* VISCOUNT SIMONDS]

This is an appeal from a judgment of the Supreme Court of Cyprus dismissing the appellants' appeal from a judgment of the Special Court of Nicosia whereby the appellants were convicted of discharging and carrying firearms and were sentenced to death.

The appeal was brought (as such appeals can only be brought) by special leave, which was granted upon the allegation that the appellants had been tried for, and convicted of, offences unknown to the law of Cyprus. Upon an appeal recently brought from the Supreme Court of Cyprus their Lordships thought fit to state once more the nature of the jurisdiction which is exercised by the Board in criminal matters and to refer to some of the cases in which the principle had been asserted or applied. To such citations may be added a passage from the judgment of the Board delivered by Lord Dunedin in *Mohinder Singh* v. *The King Emperor* 59 I.A. 233: "Their Lordships have repeated ad nauseam the statement that they do not sit as a Court of Criminal Appeal: for them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shake the very basis of justice" and a passage from the judgment of the Board delivered by Lord Simon in *Muhammed Nawaz* v. *The King Emperor* 68 I.A. 126: "Broadly speaking, the Judicial Committee will only interfere where there has been an infringement of the essential principles of justice."

It is possible that such an allegation as that which has been mentioned and which in fact is the first of the appellants' reasons in their formal case, viz. that they have been convicted of offences unknown to the law of Cyprus, might be supported by facts which would justify interference by the Board upon the principle above stated. But so general an allegation may cover defects of a trivial or technical character which would by no means justify either special leave to appeal or, if leave

was granted, the allowance of the appeal. It is therefore necessary to examine carefully the facts of each case and their Lordships proceed to do so in this case.

As has already been said, the appellants were convicted of the offence of discharging firearms and of carrying firearms, and it must be at once stated that the judgment of the trial Judge, Mr. Justice Shaw, was conspicuously careful, accurate and moderate. Their Lordships have no doubt that learned Counsel for the appellants was right in conceding that, if he failed upon the points of law on which he relied, he had no valid ground of attack upon the facts. It must be stated too that neither before the trial Judge nor on appeal to the Supreme Court were such points of law taken. The latter Court was invited to reverse the judgment of the trial Judge solely on grounds which raised questions of fact. Their Lordships therefore have not the advantage of the opinions upon the matters now raised of the Courts below to which they would naturally attach great weight. Nor assuming that the points now taken had been well founded do they know whether, if such points had been taken before the trial Judge, an amendment might not have been made under section 81 of the Criminal Procedure Law with the consequence for which section 150 of that Law provides. Nor again do they know what course the Supreme Court might have taken under section 142 of the same Law which authorises the Court to convict an accused person of any offence of which he might have been convicted on the evidence adduced at the trial. These are considerations which illustrate the mischief and inconvenience (to repeat the words of the Board in the *Attorney-General of New South Wales* v. *Bertrand* L.R. 1 P.C. 520) that may arise from an intervention in the administration of the criminal law.

Nevertheless, having said so much, their Lordships must examine the contention that the appellants have been convicted of an offence unknown to the law of Cyprus. It will appear that this contention is not well founded.

Each of the appellants was charged in the following form:

"Statement of Offence

First Count

Discharging firearms, contrary to Regulation 52 (*a*) of the Emergency Powers (Public Safety & Order) Regulations 1955 and the Criminal Code, Cap. 13, sections 20 and 21.

Particulars of Offence

The accused on the 15th day of December, 1955, at Galini, in the District of Nicosia, did discharge firearms at Major Brian Jackson Coombe of the 37th Field Squadron Royal Engineers.

Statement of Offence

Second Count

Carrying firearms, contrary to Regulation 52 (*c*) of the Emergency Powers (Public Safety and Order) Regulations, 1955 and the Criminal Code, Cap. 13, Sections 20 and 21.

Particulars of Offence

The accused at the time and place in count 1 hereof mentioned, did carry firearms".

The relevant parts of Regulation 52 are as follows:

"52. Any person who shall without lawful authority, the burden of proof of which shall lie upon him,

(*a*) discharge any firearm at any person or any group or body of persons or at any place where persons may be

. . . . . .

(*c*) carry any firearm or ammunition or any bomb or grenade

. . . . . .

shall be guilty of an offence and shall on conviction be liable to be sentenced to death or to imprisonment for life or for such lesser term as the Court may see fit to impose".

Sections 20 and 21 of the Cyprus Criminal Code to which the charge also referred were as follows:

"20. When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

(*a*) every person who actually does the act or makes the omission which constitutes the offence;

(*b*) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(*c*) every person who aids or abets another person in committing the offence;

(*d*) any person who counsels or procures any other person to commit the offence.

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission.

21. When two or more persons form a common intention to prosecute an unlawful purpose in connection with one another, and in the prosecution of such purpose an offence is committed of such nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

Upon these charges the submission of the appellants was that sections 20 and 21 of the Code had no application to the Regulation and that therefore they were charged with offences unknown to the law of Cyprus. They were not, it was said, found guilty of themselves discharging or carrying firearms: their "offence" lay in the application to their case of one or other of the provisions of section 20 or section 21 of the Code: if these provisions did not apply to Regulation 52, then there was no offence of which they could lawfully be convicted.

The argument proceeded thus. In the Criminal Code an "offence" is defined in section 4 as meaning an act attempt or omission punishable by law: the Criminal Code does not contain a definition of law, but by section 2 of the Interpretation Law (Chapter 1 of the Laws of Cyprus 1949) as amended by Law No. 30 of 1953 "Law" is defined as meaning "any enactment by the competent legislative authority of the Colony but does not include . . . an Order of Her Majesty in Council, Royal Charter or Royal Letters Patent": Regulations made by the Governor under the Emergency Powers Orders in Council of 1939 and 1952 are the act of the executive authority and do not fall within the definition of "Law": therefore an offence against the Regulations is not an offence punishable by "law": therefore sections 20 and 21 have no application to such an offence.

In their Lordships' opinion the answer to this contention is supplied by the Regulations themselves, which by paragraph 2 (2) provide that "the Interpretation Law shall apply to the interpretation of these Regulations and of any Order made or direction given thereunder, as it applies to the interpretation of a Law and, for the purposes of the said Law, these Regulations shall be deemed to be Laws". It was urged

on behalf of the appellants that the sole effect of this provision was to provide that the provisions of the Interpretation Law as to the proper interpretation of laws should apply to the interpretation of the Regulations. But this is the meaning and effect to be given to the first part of the sub-paragraph : the latter part of it appears to their Lordships precisely to meet the present case and to provide that, where, as for instance in the relevant sections of the Criminal Code, the word " law " is used, it shall be deemed to cover the Regulations. But apart from this consideration it is by no means clear to their Lordships that the word " law " where it is used in the definition of " offence " in the Criminal Code has the meaning ascribed to the word " Law " by the Interpretation Act. In its context it more appropriately means the whole body of law for the infraction of which penalties are imposed.

It was then urged that if, contrary to the appellants' contention, the Regulations fall within the definition of " law ", yet sections 20 and 21 of the Criminal Code do not apply to their case because it is provided by section 2 (*a*) of that Code that " nothing in the Code shall affect the liability, trial or punishment of a person for an offence against any Law in force in the Colony other than the Criminal Code ". There is no validity in this argument. At the time when the Criminal Code came into operation, other legislation creating offences remained in force and it must have been contemplated that further legislation dealing with particular offences might be passed. The purpose and effect of section 2 (*a*) was merely to provide that the Criminal Code should not be regarded as exhaustive. It cannot reasonably be construed as excluding the operation of the Code where it is not inconsistent with the provisions of particular legislation. This is equally true whether sections 20 and 21 are under consideration or sections such as sections 16 and 17 which are for the benefit of accused persons. This view is emphasised by the further provisions of section 2 itself and in particular by the proviso which provides that, if a person does an act which is punishable under the Code and is also punishable under another Law of any of the kinds mentioned in the section, he shall not be punished for that act under both Laws.

Finally, it was urged that sections 20 and 21 or at any rate section 20 of the Code had been impliedly repealed by other Regulations made under the Emergency Powers Orders in Council and particularly by Regulations 72 and 73. This contention also fails. It is true that many of the provisions of sections 20 and 21 of the Code are repeated (some of them verbatim) in Regulation 72 but this duplication does not involve the repeal of the Code or any part of it. This is clearly recognised by Regulation 76 (the counterpart of the proviso to section 2 of the Code) which provides that " Nothing in these Regulations shall affect the liability of any person to trial and punishment for any offence otherwise than in accordance with these Regulations : Provided that no person shall be punished twice for the same act or omission ".

In their Lordships' opinion therefore this appeal fails on all the points of law which have for the first time been raised before them. But the contention last referred to, that the relevant sections of the Code had been impliedly repealed by the Regulations, leads them to make a final observation.

Whatever be the correct view with regard to sections 20 and 21 of the Code a study of the careful judgment of Mr. Justice Shaw indicates that a conviction under Regulations 52 and 72 must have resulted if the charge had been so framed without reliance on these sections.

Their Lordships have for the reasons herein appearing humbly advised Her Majesty that this appeal should be dismissed.

(39813) Wt. 8069—3 90 8/56 D.L.

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v.

THE QUEEN

DELIVERED BY VISCOUNT SIMONDS

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