[ZEKIA, J. and ZANNETIDES, J.]
(Nov. 12, 1955)

MICHALAKIS SAVVA KARAOLIDES *Appellant,*
*v.*
THE QUEEN *Respondent.*

(*Criminal Appeal No.2016*)

*Criminal Law – Evidence of motive on murder charge – Wrongful admission of – No miscarriage of justice.*

P .C. Poullis of the Special Branch was shot dead while on duty in Ledra Street, Nicosia, on 20th August, 1955. One of the assailants mounted a bicycle but was intercepted; the cyclist made his escape but the bicycle was seized. It was found to belong to Karaolides who went into hiding for eight days but Was arrested on 3rd September having descended from a motor-car to avoid a police road block. In his possession was found a piece of paper on which was written:

"I am sending you the bearer of this note and take good care of him. He is a good boy and a patriot to the point of sacrifice, you can trust him. Nobody should know his identity." (The note is signed 'Averoff' ).

Karaolides was tried for the murder of Poullis and convicted.

The Assize Court accepted the evidence of two eye-witnesses for the prosecution who identified Karaolides as one of the assailants; it rejected the evidence of one prosecution eye-witness, the evidence of four defence eye-witnesses and the accused's own evidence and that of his witnesses to an *alibi.*

In order to show motive or to show that this crime was not 'committed without motive, the Assize Court admitted the following evidence: evidence that the "Zedro" to which the note (Exhibit 8) was directed was one Afxentiou, a terrorist leader; pamphlets purported to be distributed by E.O.K.A., the terrorist organization, and showing intent to punish police officers; evidence of attacks on and murders of police officers of the Special Branch following the distribution of the pamphlets.

The defence objected to the admissibility of the note signed 'Averoff' and the evidence as to motive

Upon appeal to the Supreme Court,

*Held*: The evidence of attacks on and murders of police officers should not have been admitted as such evidence, even if technically admissible in order to ascertain motive; for it might have a prejudicial effect which out-weighed its evidential value. However, there had been no miscarriage of justice.

Upon appeal to the Judicial Committee of the Privy Council,

*Held*: The note signed 'Averoff' was admissible, but the documents put in to connect the appellant with terrorist activities and to explain the word "Zedro" wert: inadmissible.

But the appellant had not established that there had been a miscarriage of justice and the conviction was affirmed.

(Their Lordships referred to the cases wherein the manner in which jurisdiction is exercised by the Board of the Privy Council has been settled.).

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The accused was convicted by the Assize Court (Hallinan, C. J., Pierides, P. D. C. and Ekrem, D. J.) at Nicosia on the 28th October, 1955.

Summing up in Assize Court by:

HALLINAN, C. J.: The accused stands charged with the murder of Police Constable Poullig on the 28th August. There was a meeting of the old Trade Unions in the Alhambra Hall on the morning of Sunday the 28th August. Among other police on duty there that morning was the deceased Poullis. At about 12.20 or 12.25 that morning he was surrounded by three assailants and one of them shot him three times with a revolver. The ammunition was .38. The obviously fatal wound went through the right side of the chest, through the heart and the left lung and came out somewhere in the neighbourhood of the left nipple. Poullig staggered a few paces as if to attack his assailants and he collapsed outside in the street. At the moment when he was attacked he was at the entrance to the Women's Market off Ledra Street which leads to the Alhambra Hall, and he collapsed outside Michaelides' shop which, as you face the entrance to the Market, is on the left. The shirt of the deceased shows that the shots were fired at close range so as to discolour the cloth with powder.

It is common ground for all the witnesf!,es of the prosecution and the defence who bore testimony on this point that one of the assailants with a gun got on to a bicycle and went down Ledra Street towards its

junction with Kykko Avenue. There, one of the Crown witnesses, Christodoulos Michael (witness 5) who had attended the meeting at the Alhambra Hall and had got down on his bicycle as far as Kykko Avenue, turned back on hearing the shots. He deliberately collided with the assassin who was coming down on his bi cycle with his gun at the corner of Ledra Street and Kykko Avenue, outside the Bank of Athens. The bicycle ridden by the assassin was picked up by P .C. Nazim (witness 6) and is Exhibit 3 in this Court. It was proved by a partner in the firm of Ouzounian that that bicycle had the registered number of a bicycle sold to the accused when he was a student at the English School. It was a sale on credit and his uncle who was a witness at" this trial, Damianos Kamenos (witness 13), was the guarantor.

So far it has been established that Poullis was murdered and that his assailant rode off on a bicycle which is the bi cycle of the accused.

The accused had been employed as a clerk in the Income Tax Office which is situated in the quadrangle of the Secretariat. He had been at work on Saturday the 27th but he was absent from work on Monday the 29th and has never returned to work. On Saturday the 3rd September there was a road block. on the road from Nicosia to Lefkonico, at Chattos. A car with registered number F448 passed the road block and soon afterwards a man was seen walking in the fields not far from the police station. He failed to come when the police called him, they went after him, and brought him into the station. In answer to their questions he gave a false name, a false address, wrong employment and a false name of the driver in whose car he had been driving. That person was the accused. In his clothing when searched was found the note Exhibit 8. It was in Greek, addressed to one Zedro and ran as follows: "I am sending you the bearer of this note and take good care of him. He is a good boy and a patriot to the point of self-sacrifice, you can trust him. Nobody should know his identity", and the note is signed "Averoff". The accused said that this note had be en given to him to convey to a friend. Not long after, the car F448 returned to the road block and the driver turned out to be Christoudis, who was a clerk in the Archbishopric. The finger print evidence given by Inspector Dekatris and P. C. Ozesh who took the photographs clearly establishes that the accused was in that car. The driver asked permission to go out and get the car key, he went out, started up the car and has never be en seen since. The accused was brought into Famagusta and took the attitude that the police should find out who he was; and when brought up to Nicosia he maintained the same silence. There was no attempt to establish the *alibi* which he has sought to establish at this trial.

The prosecution have led evidence to establish that this note found in the possession of the accused was to one of the leaders of the terrorist organisation known as Eoka. On the night of the 3lst March last a certain Neofytos Petrou, of Lyssi, lent his car to a man called Afxentiou. There is evidence that this car was afterwards found that night containing explosives and also that in a number of places throughout the Island explosions occurred which were due to the activities of Eoka. Indeed. a pamphlet found in the car purported to be issued by Eoka and declared its objects were the liberation ,of Cyprus from the English yoke, and declaring the intention of the organisation and its members to either kill or be killed. The house of Afxentiou was searched at Lyssi, and in his clothing were found one document headed "Order" .and another document headed "General Order" issued by Dighenis, the leader of Eoka, and directed to one Zedro. The prosecution have thus established that the note which the accused was carrying was directed to one of the leaders of Eoka. They have also produced some pamphlets picked up by the police purporting to be distributed by Eoka, and these are put in evidence in order to show that it was one of the objects of Eoka to punish police officers who resist their activities. One, on the 5th April, which was directed to the Cyprus Police, said that sanctions will apply to those who resist Eoka, and another picked up on the 1st April, also directed to the police, states that whoever offers resistance against the Cypriot patriots will be executed. Evidence was then led that these were not idle threats but were followed by deadly attacks on the police. There was an attempt on the life of a policeman called Aspros on the 1st July. Another attempt to murder the victim in the present case, Poullis, on the 13th July. Again a .38 bullet was usede On the l0th August special constable Zavros was murdered. He had three brothers in the police, one of them' in the Special Branch; and on the 11th August Police Sergeant Costopoulos was murdered. All these attacks were made on members of' the Special Branch. The Crown have also put in a pamphlet, picked up in the Ayios Antonios quarter of Nicosia on the 5th September. This purports to be issued by Eoka and to state that those policemen who have been murdered were justly murdered as traitors. In our view the evidence that it was an object of Eoka to threaten and to execute these threats against members of the Special Branch is established by the first two pamphlets that I have mentioned which were picked up by the police, and the attacks on the policemen and their killing. To establish the fact that Eoka openly admits after these crimes, having done them, would, in our view, require stronger evidence than the production of this pamphlet found at Ayios Antonios quarter on the 5th September. We therefore disregard Exhibit 17 for the purposes of this case.

So far as I have gone there has be en no appreciable conflict between the case for the prosecution and the case for the defence. Poullig is murdered, the assailant runs off on the accused's bicycle, and the events that occurred at Chattos are not seriously in issue. The conflict of evidence is limited to whether on the one hand the eye-witnesses produced by the Crown are to be believed, or that we are to accept the evidence of the accused explaining how the bicycle got out of his possession into the hands of the assailant and the evidence that he has given us as to his *alibi.*

The Crown produced three eye-witnesses, one man named Hussein Mehmet Djenkiz, a motor car driver, the other a clerk named Feizi Hussein Derekoglou and lastly a Police Constalıle, Mehmet Ismail. The defence produced several witnesses to discredit Djenkiz, but even without that evidence on his demeanour in the box, this Court had come to the conclusion that we were not able to rely on his evidence.

The evidence of Derekoglou and of Ismail is a very different matter. Derekoglou was going for a walk in Ledra Street at about 12.20 and he had got to somewhere near the shop of' Boxalian, which is further down Ledra Street from the entrance to the Women' s Market on the same side, opposite the Bank of Athens. He saw a man take a bicycle from the payment near the Keo Offices at the corner of Ledra Street and Liberti Street, he had a revolver in his hand and was putting it into his shirt. The man got on the bicycle, this, I must say, was after the witness heard the shots being fired; he saw the collision between the two bicycles which was at the corner of the street where he happened to be, and he was himself, I may say, a special constable as well as a clerk, and he chased the man with the gun who had been knocked off the bicycle by Kykko Avenue in the direction of Phaneromeni Street. He, the witness, who was on his bicycle, passed other pursuers round Phaneromeni Street and up Kykko Avenue, the fugitive looked back and he saw his face again somewhere round Phaneromeni Street, and again at point 9 on the plan (which is put in), the fugitive again turned and threatened the witness with a revolver. Finally the fugitive turned down a side street to the left into Hermes Street, and he lost sight of him.

Police Constable Ismail was on duty outside the Alhambra Hall at the time of the shooting; and immediately after the shots he actually saw the assailant. He did not see the gun but he saw the smoke coming out from under his armpit; and then he saw the assailant take a bicycle from near Keo offices and proceed down Ledra Street. He saw the collision and he chased the fugitive up to Phaneromeni Street where he, the

witness, got on a bicycle and continued until again, like the clerk Derekoglou, he lost sight of him.

We have considered slight discrepancies in the evidence between these two witnesses and such slight discrepancies between Derekoglou's statement as to the accused taking a pistol out of his pocket or out of his shirt, discrepancies between the depositions and the evidence here, but we do not consider that their evidence has be en shaken in the cross-examination. Their evidence is to some extent corroborated by the evidence of Christodoulos Michael, the man who threw his bicycle in the way of the assailant. The two witnesses, Derekoglou and Ismail, have no doubt that the man they saw and the man they chased is the accused. Christodoulos Michael certainly showed courage in throwing his bicycle in the way, but it is extraordinary that although he must have seen the assailant of Poullis who was on that bi cycle when they collided, and although he chased him up Kykko Avenue and the man turned round and he saw his face again, he says that he is unable to identify that man as the accused. He had said to the police and said here that the man was about the same height as himself, 5' 7½", that he was slim, that he had a light coloured shirt, and that he was about 25. One could understand Christodoulos coming here and saying that the accused is not the man who was on the bicycle, but it is difficult to believe him when he says he does not know whether the accused is the man he saw or not. However, his description does tally with the description of the accused.

The defence have called three witnesses who purport to be eye-witnesses and who bay that the man in the dock is not the man who shot Poullis and who was pursued down Ledra Street and up Kykko Avenue. The first was Haritonides, who is the owner of the kiosk at the entrance to the Women's Market. This man saw three people come out of the Alhambra Hall, and he also saw the deceased Poullig close by the witness's kiosk: Then he heard the shots and he saw the three people going away with their backs to him. Now, when he saw them coming out of the Alhambra Hall, there does not seem to be any reason why he should have particularly noted their appearance no more than the many hundred people who had come out of there also, and after the shots were fired he never saw their faces again. It is difficult to see how this man can come into Court and swear positively that none of these three men is the accused in the dock.

The next witness was a schoolteacher called Myrianthopoullos, who said he was sitting at the material time in a cafe opposite the entrance to the Women's Market. He heard the shots but did not realise that

anybody had been shot. And he said he saw the three people walking away hurriedly for more than two seconds. He did not see anything in any of their hands. He never gave any description of these people to the police, but on seeing a photograph of the accused in the paper he declared that none of the three people that he had seen were the accused. He did not relate what he did after the shooting; for all we know he continued to sip his coffee. We got the impression that this school teacher is not without bias against the Crown, he told us that he and his father were ardent nationalists, and that even if he were in a position to give evidence for the Crown on an offence by terrorists he would not do so. We were left in some doubt as to whether this was through fear or through bias or through both. But at this critical stage when forces of the Crown are trying to restore law and order it seems a pity that this sort of man should be directing youth.

The third witness called by the defence on this part of the case was Hallis. He is a young fellow of 18 and if a man can be judged by appearance and demeanour we would put him in a low category. The type that belongs to the riff-raff of a big town. He said that he was attending the meeting at the Alhambra as an old trade-unionist, and he was about 30 paces from the Bank of Athens in Kykko Avenue. He saw the collision of the two bicycles and he heard the shots. He understood that somebody had thrown a bomb. He gave chase to the man who had got off the bicycle and was running up Kykko Avenue, and although he had no bicycle he alleges that he was out in front of everybody. He said that the fugitive had no pistol and that he was wearing a yellowish shirt, which certainly does not correspond with the other evidence. It would appear that after being some hours in the police station waiting for his statement to be taken, and possibly having heard that the murdered man was not an old trade-unionist but a policeman, he seems to have lost his ability to identify the assailant.

At any rate, after the arrest of the accused on the 4th September there was an identification parade held in Nicosia and the accused was identified by witness Derekoglou and witness Ismail; but Hallis, who was also at the parade, was unable to identify him.

We now come to the accused's own story. He said that he was living at that time in a room in Strovolos with his two sisters, but on Sunday the 28th August his two sisters were up at their village, Palechori. He got up on that morning and on going out met his brother-in-law, a man called Phidias, and they both went off to a coffee-shop in Strovolos called "Votsis" run by a man called Costas. About II o'clock, or perhaps a little earlier, Phidias had gone off to this meeting of the old Trade

Unions at the Alhambra Hall and in doing so he had borrowed the accused's bicycle. The accused then went off on his sister's bicycle to the house of his uncle Damianos who lives at Cadmus Street somewhere near the Acropole Hotel. There he had joined Damianos, his wife and two daughters in a room where they were listening to the radio up to about noon. When the current of the radio failed they moved out into an adjoining yard under the shade of a mulberry tree, and there they joined two neighbours called Cherkezos, father and son. The elder Cherkezos had rented a house from Damianos. The accused played a game of draughts with the young Cherkezos, and somewhere about one o'clock Damianos' assistant, a grocer boy called Arghyros, arrived from town, and he told them that he had heard that a policeman had been murdered. About a quarter of an hour later the accused's brother-in-law Phidias arrived. He took the accused aside and told him that on coming out of the Alhambra Hall a policeman had been shot, and one of the assailants had stolen the accused's bicycle which Phidias had left outside in the street. The accused said he was very disturbed at this news and went and told Damianos that he would not stay to lunch and went off. He told the Court that he feared the police would associate him in this crime not only because of his bicycle but also because of the fact that there had been an explosion probably due to Eoka in the Income Tax office last July. He then went back to his house at Strovolos where he left his sister's bicycle and then proceeded to the house of a friend whose identity he refuses to disclose. There he remained concealed until on the 3rd September he got into the car which took him down to Chattos, where he was picked up by the police. He told the Court that this note directed to Zedro had been given to him by this friend, and his instructions were that when he met a man in a blue shirt after an exchange of certain passwords he was to deliver this note.

Now, his evidence falls into two parts, on8, his explanation of why his bicycle was being ridden by Poullis' assailant and the second an alibi. But both parts of his defence are closely bound up together. For, if we are unable to accept the story of the bicycle it will be fatal of course to the alibi. Now, he called as witnesses for the *alibi* his uncle Damianos, the two Cherkezos and the boy Arghyros. Damianos appears to have told the police on the 29th that the accused had been in his house the previous morning, and when he was called to the police station on the 8th September he also made a statement to the police about the accused coming to his house, listening to the radio and being there at the material time when Poullig was murdered. The Police had on the 8th September called Damianos evidently to take a statement concerning the bicycle for which Damianos had been guarantor, but they did not record the statement he made as to the accused's

movements on the morning of the 28th August. This, in the view of the Court, should have been recorded, and for whatever reason a witness is called to make a statement, if he makes a statement voluntarily which amounts to an *alibi* for an accused person, it should be recorded.

The two Cherkezos and also the boy Arghyros have come and corroborated the story of the accused and of Damianos.

It is very difficult to test the verocity of an alibi of this kind, but it is very of ten on a small matter that the weakness of an *alibi* might be revealed. The young Cherkezos said that he usually played draughts with the accused, but that, before Sunday 28th August, he had not played draughts with the accused for a long time; he had only played once or twice since the accused had gone to Stroyolos a year ago. Yet Arghyros told us that the accused and young Cherkezos had had a game of draughts on the. Sunday previous to the 28th August.the cafe-keeper Costas was called also to corroborate the giving of the bicycle from the accused to Phidias, and finally Phidias himself was called to testify what had happened to the bicycle. His story to the Court is frankly incredible. He said that he attended the meeting at the Alhambra and left the bicycle on the payement a little further down the street from the entrance to the Women's Market on the same side, and he heard the shots and saw people crowding round the victim. He saw three people running and one took his bicycle and rode off with it. Now, he said that he was on the edge of the crowd that was round the victim, and that about 10 minutes after watching the crowd he saw the man run off with his bicycle. Well now, even if he has a very poor idea of time and we reduce the ten minutes to one, it still does not make sense with the rest of the evidence. He says that although he was a few feet from the man who was running away with his bicycle he made no effort to stop him nor did he invite any of the numerous people round him to assist him. Nor can we understand why when he got back to Damianos' house he should take the accused aside and tell him in secret what had occurred; he was among friends and relatives and the sooner that they heard the true explanation of how he lost the bicycle the better.

So that we have to consider who is telling the truth: the eye-witnesses for the Crown, Derekoglou and P.C. Ismail, on the one hand, who positively identified the accused, or to believe the story that he was not there at all, that some other person stole the bicycle from Phidias while the accused was in the house of Damianos. We have to consider on the one hand the manner in which these two eye-witnesses have given their evidence and their demeanour, and on the other hand the incredible evidence given by Phidias.

We have the incontrovertible evidence that the man who shot Poullis was the man on the bicycle of the accused. We have it that the accused disappeared immediately after the crime, we have it that everything points to this crime having been planned and ordered by the terrorist organisation known as Eoka, and we have it that the accused when he disappears after some days of hiding goes off in a motor car with a note to one of the leaders of Eoka.

It has been put forward by his counsel that Eoka would manage things better than to let him fide on such a fateful undertaking on his own bicycle, but we must remember that but for a failure of nerve on behalf of the accused when he got to Chattos he would have escaped. Only for his own failure of nerve the organisation would have saved him. He was unfortunate to have found so resolute an eye-witness as Derekoglou and Ismail, but nevertheless he got away.

Having regard to the evidence against him, which is not seriously challenged by the defence, and. the evidence of the eye-witnesses Derekoglou and Ismail, which we accept, we must reject his evidence and his *alibi.*

He has be en very ably defended by counsel, who have behaved with great decorum and zeal throughout the trial. But, in our view, the Crown with great ability have presented a case that leaves no reasonable doubt in our minds that he is guilty of the offence with which he is charged.

*We fnd him guilty of murder.*

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Appeal by the accused from the judgment of the Assize Court of Nicosia (Case No. 12290/55).

*Stelios Paylides, Q. C., George N. Chryssafinis, Q. C., A. Indianos, E. Emilianides, Glaicos Clerides and C. Phanos* for the appellant.

R. R. Denktash, Acting Solicitor-General, for the respondent.

*The judgment of the Supreme Court was delivered by:*

ZERlA, J.: This is an appeal against the verdict of the Special Assize Court of Nicosia by which the appellant was convicted of the murder of Police Constable Herodotos Michael Poullig on the 28th August last in Nicosia. The old Trade Unions were holding a meeting in the Alhambra Hall, which has its entrance on Ledra Street, Nicosia, on

the morning of the 28th August. Deceased Poullis with some other policemen were on duty at this meeting. Next to the Hall is the women's bazaar, the market. The entrances of the Hall and of the market are close to each other and people may walk in or out of the Hall and market through either entrances. Towards noon the meeting came to an end and people started to disperse. After the greater part of the people attending the meeting had left the Hall and went away, sometime between 12.20 and 12.30 p.m., three persons surrounded Poullis who at the time was standing in the entrance of the women's bazaar. One of the three shot him, the deceased, with a revolver from close quarters three times. The victim made a few paces towards the street and collapsed. His death was caused by a bullet .38 which penetrated his heart and lung. The three persons encircling the victim ran away from the scene of the crime down Ledra Street. One of the assailants with a revolver got on a bicycle which he took from the payement opposite the KEO offices from a point 55 feet away from the scene of the crime, and rode down in the same street towards its junction with Kykko avenue. A certain Christodoulos Michael, a Crown witness, with a view to stop the fugitive threw his bicycle across the road in front of him. The fugitive on his bicycle collided with the bicycle on the ground and as a result he came down of his bicycle and abandoned it there at a point near the corner of Ledra Street and Kykko avenue, 205 feet away from the scene. The assailant was then seen running away all along the Kykko avenue for a distance over 150 yards chased by a number of people including the eye-witnesses who gave testimony as to the identity of this fugitive who eventually succeeded to escape after taking another street, namely Hermes Street.

The bicycle which was abandoned at the place of the collision was later picked up by Police Constable Nazim and it was established that it belonged to the appellant who was making use of it for the last two or three years.

There appears to be a common ground and at any rate established beyond any doubt that the person who rode off from the scene of the crime down Ledra Street and was forced to abandon his bicycle at a point we have just described and continued the flight all along' Kykko avenue was the principal felon who committed the murder. The identity of this person formed therefore the only crucial point in this case. The trial Court in ascertaining the identity of the murderers had before them both direct and circumstantial evidence. They had two eye-witnesses who recognised and identified the appellant as the person escaping from the scene of the crime on the bicycle soon after the murder. One of them, P .C. Mehmed Ismael, witnessed the actual commission of the

offence. The trial Court accepted the evidence of both these witnesses. In addition the Court had the bicycle which the assassin rode off from the scene of the crime in order to escape immediately after the murder. It belonged to the appellant. This was not disputed. The trial Court had also the peculiar conduct of the appellant after the crime which was taken into account. The appellant disappeared immediately after the crime. Although a clerk employed in the Income Tax Office he did not turn up for duty on Monday following the day of the offence. He did not return to his office since. He concealed himself as he alleged in the house of a friend, whose identity he did not wish to disclose, until the 3rd September when in a friend's car that day endeavoured to reach Lefkonico for asylum. On their way to Lefkonico near the village of Chattos from a distance they noticed a road-block which they had to clear. Appellant, afraid of the detection of his identity at the road-block by the policemen who checked the vehicles and passengers, alighted from the car. His friend, the driver, proceeded on to Lefkonico. Appellant walked into the fields with a view to avoid the road-block examination and to overtake the car which would have waited for him beyond the said road-block. He was seen walking into the field by the policeman and he was brought to the Police station at Chattos. There in answer to questions put to him he gave false name and address and lied about his employment and the name of the driver of the car in which he was traveling. When he was searched in his breast pocket of his jacket a letter of introduction couched in the following terms was found: "Zedro, I am sending you the bearer of. this note and take good care of him. He is a good boy and a patriot to the point of self-sacrifice, you can trust him. Nobody should know his identity. Averoff." He was then brought to Famagusta where he declined to disclose his identity. Before trial he did not attempt to make any statement as to his defence of *alibi* which he put forward at his trial by giving evidence and calling witnesses.

With a view to establish motive the prosecution led evidence to show that the appellant was associated with a terrorist organization in the Island called EOKA, the avowed object of which being by acts of violence, including acts of sabotage and murder of the members of the Police Force, those in the Special Branch in particular, to overthrow the Government and bring about Union with Greece. The trial Court on the evidence led found that this crime was planned and executed by the said terrorist organization. We quote from the judgment at page 139: "We have the incontrovertible evidence that the man who shot Poullig was the man on the bicycle of the accused. We had it that the accused disappeared immediately after the crime, we have it that everything points to this crime having been planned and ordered by the terrorist organization known as EOKA and we have it that the accused when he

disappears after some days of hiding goes off in a motor car with a note to one of the leaders of EOKA".

So far we have endeavoured to give a brief account of the evidence adduced before the trial Court which was accepted and acted upon. We pass now to the consideration of the grounds of appeal. We propose to deal first with the appeal on questions of law. It has been contended that the whole or part of the evidence of certain prosecution witnesses was received at the trial though inadmissible because it relates to acts and/or occurrences by third parties which took place in the absence of the appellant and with which the latter is not connected.

The evidence which was impugned on the ground of inadmissibility was adduced in order to establish motive in this crime. Although motive is not an ingredient in a felony or murder it is relevant and of importance to receive . evidence tending to show or suggest motive on the part of an accused person. In the words of Lord Chief Justice Campbell in his charge to the jury in *Reg. v. Palmer* states, "with respect to the alleged motive, it is of great importance to see whether there was a motive for committing such a crime, or whether there was not, or whether there is an improbability of its having been committed so strong as not to be over-powered by positive evidence. But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance".

Prosecution started with the introductory not e found on the appellant when he was searched at Chattos. The note was addressed to someone called Zedro. This name was traced back to the 1st April when island-wide outrages by EOKA had started in the night preceding. In the clothing of a certain Afxentiou. from Lyssi two documents headed "Order" and "General Order" respectively were found addressed to Zedro signed at the end by the leader, Dighenis. These orders Exhibit 14 (A) and (B) bear the letters EOKA on the top and the contents clearly indicate that Zedro was one of the leaders of EOKA. It was established that Afxentiou, very probably the one called Zedro, lent the car he secured from a certain Neofytos Petrou to one Christofis Panteli of Liopetri who was caught in the early hours of the 1st April at Akhnatransporting in this car EOKA pamphlets, hand-grenades, anti-tank mines and other explosives. The said Pantelis was convicted and sentenced by Famagusta Assizes. On the same night allover the Island acts of sabotage took place. Military, Police and Public buildings were the main targets. The pamphlets picked up in Nicosia at Ayios Antonios Church on the 5th April and on the 1st July were addressed to Police Force by EOKA and it contained threats against those who resisted their

activities. The appellant sought protection from a leader of EOKA called Zedro through an intermediary, another EOKA man of some influence apparently, called Averoff, a few days after the killing of the Police Constable. This fact indicates some association between him and the unlawful organization EOKA. The fact that in the open introductory letter he was carrying to the District leader of EOKA, he was described as a patriot to the point of self-sacrifice suggests strongly that he was not a victim of unfortunate circumstances which compelled him to seek refuge at EOKA quarters. So far the evidence adduced was enough to suggest a motive and definitely adequate to negative absence of motive on the part of the appellant. Obviously EOKA aimed to disrupt peace and order in the country and as such naturally was hostile to the police force which was to maintain law and order. But the prosecution proceeded further and introduced evidence relating to the murder of a police sergeant Costopoullos and special constable Zavros and to an attempt to kill the victim in this case and a certain policeman called Aspros which attempts and murders were committed between the 1st July and 11th August last.

Leaflets picked up in the streets and purporting to be issued by EOKA were considered in conj unction with those felonies and like the crime under consideration were all found to be attributable to EOKA.

Was all this effort directed to prove a motive? Whether the murder of Poullis is an EOKA murder or not is not in issue save so far as to suggest or prove motive on the part of the appellant. It seems to us the prosecution had gone a bit too far in this direction to let in such evidence eve n with a view to prove motive. It is out of proportion to the purpose for which it has been received. We think that such evidence in fairness to the accused ought to have been excluded. Accounts of such crimes ought not to have been introduced in the trial of the appellant. He is not connected with them. To trace such crimes to EOKA without trial and while their perpetrators remain undetected is very difficult indeed and the utmost one could get at is that EOKA is strongly suspected for the commission of these felonies. Moreover even if this kind of evidence is strictly admissible in order to ascertain motive its prejudicial effect to the defence might well outweigh the necessity of calling such evidence. We think we may relevantly quote a passage from the judgment of Lord Du Parcq in *Noor Mohammed v. The* King (1949), 1 A.E.R., page 370:

> "It is right to add, however, that in all such cases the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial having regard to the purpose to

which it is professedly directed, to make it desirable in the interest of justice that it should be admitted. If, so far as that purpose is concerned, it can in the circumstances of the case have only trifling weight, the judge will be right to exclude it. To say this is not to confuse weight with admissibility. The distinction is plain, but cases must occur in which it would be unjust to admit evidence of a character gravely prejudicial to the accused even though there may be some tenuous ground for holding it technically admissible. The decision must then be left to the discretion and the sense of fairness of the judge."

As to the effect of misreception of such evidence in cases where the trial Court relied mainly on circumstantial evidence the conviction very likely would have been quashed. In the present case, however, apart from circumstantial evidence we have the evidence of the eye-witnesses on whose testimony the trial Court chiefly relied for a conviction. We read from Archbold under the subhead "wrongful admission of evidence" (page 343 last edition) :

"Where it is established that evidence has been wrongfully admitted, the court will quash the conviction unless it holds that the evidence so admitted cannot reasonably be said to have affected the minds of the jury in arriving at their verdict, and that they would or must inevitably have arrived at the same verdict if the evidence had not been admitted. In considering this question, the nature of the evidence so admitted and the direction with regard to it in the summing-up are the most material matters."

The trial Court in assessing the evidence of the eye-witnesses in nowhere in the proceedings appear to have been influenced by the evidence tending to show motive. They considered at length the credibility of the eye-witnesses but throughout they treated this aspect of the case distinct from the evidence going to motive. In our view it cannot reasonably be argued that the trial Court by receiving the evidence commented upon has been influenced in some way or other in accepting the evidence of the two eye-witnesses or in rejecting the evidence of *alibi* and the witnesses who stated that appellant was not in the group of three men who surrounded the victim immediately before he was shot or that he was not the person who ran away from the scene of the crime on a bicycle. We are of the opinion therefore that without the evidence thus wrongly admitted the trial Court would have come to the same conclusion and on the evidence accepted must inevitably have arrived at the same verdict.

The second point of law is that the Court excluded questions properly put to the eye-witness Direkoglou. Defence was not allowed to put the following question: "And why then in connecting the person whom you were chasing and the accused you did not think of saying that; it occurred to me that it was the person whom I had seen not very long ago in my office. Why did you connect him back to the Secretariat three years ago and not to the last time you saw him 20 days previously". This question is repeated by the counsel a little later in the following terms: "I must ask this witness, if Your Lordship rule my question out 1 will of course abide by it, but 1 .do ask the witness why instead of linking the accused with the person that had visited him 20 days before this occurrence he linked him with the Secretariat 2-3 years ago, that is my question". The President of the Assize Court ruled it out and considered- it a subtle question 'of human psychology which the witness was not: entitled to answer unless he is an expert. The witness previously to a similar question had answered (at page 22), "My first impression on that day was that I had seen him somewhere but I could not make up my mind where it was. At the identification parade I understood that I had seen him at the Secretariat." "Q. I see, so it was only at the identification parade, on the 4th September, for the first time that you thought that the person whom you were chasing was the person whom you had met before at the Secretariat. Am I putting it correctly?" A. "Not quite correct. The first thing I saw at the police station was the same person I saw on the 28th and the same person I saw at the Secretariat".

We are of the opinion that the President of the Assize Court was not unjustified in excluding this question the answer to which evidently leads to nowhere. On the other hand the witness had given an answer to a similar question. Going through the shorthand notes of the evidence of this witness we do not think that any latitude in cross-examining him was unreasonably denied to the defence.

We pass now to the ground of appeal for which leave to appeal has been granted. The first ground is that the conviction having regard to the evidence as a whole was unreasonable.

The evidence accepted by the trial Court was most critically examined by the learned counsel appearing for the appellant:

(a) It has been urged that the Court did not attach significance to the fact that prosecution brought an alleged eye-witness, called Djinkiz, whose evidence was fabricated and that from this fact the Court failed to infer that influences were at work to the prejudice of the appellant. The

evidence of this witness was rejected by the trial Court as being unreliable but there is no finding that this witness had fabricated his evidence. We do not think therefore that the Court failed to take into account a reasonable implication which would have otherwise arisen if they had found that the prosecution presented to the Court fabricated evidence.

(b) The conduct and behaviour of the Police in failing to take down part of the statement from witness Damianos, uncle of the appellant, regarding the presence of the appellant in his house at the material time of the commission of the offence, which might have been of assistance to the defence of *alibi* put forward by the appellant in his trial, was vehemently attacked and it has been described as contemptible and disgraceful conduct. The fact remains, however, that the trial Court believed that on the 29th August and September the uncle had mentioned to the Police about this *alibi* and this considerably reduced the possible adverse effect this omission might have in the assessment of the evidenceof the uncle as to the alibi.

(c) It is correct that Damianos has been misquoted as a defence witness in the judgment but there is nothing to suggest that his evidence was wrongly assessed on that account.

d) The defence was rather emphatic in submitting that the trial Court was obviously wrong in holding that if they were unable to accept the story of the bicycle, this as a matter of course would have been fatal to the *alibi*. The Court stated (at p. 138 of the notes): "Now his evidence falls into two parts, one, his explanation of why his bicycle was being ridden by Poullis' assailant and the second an *alibi.* But both parts of this defence are closely bound up together. For, if we are unable to accept the story of the bicycle it will be fatal of course to the *alibi.*" We find ourselves to some extent in agreement with the defence in saying that if the trial Court was unable to accept the story of the bicycle, that fact alone would not necessarily render fatal the defence of alibi. But the Court did not act under this reasoning in fejecting the defence of *alibi*. They considered the defence of *alibi* at length elsewhere in the judgment and it would not be fair to say that their mind operated within the narrow limits of this reasoning in rejecting the *alibi*. It is not infrequent that an unguarded statement might escape a judge in his judgment, which, if taken in isolation and given full weight, might render the findings of such Court unreasonable. But the correct course is to review the judgment as a whole and ascertain the view taken by the Court in arriving at certain conclusions. We do not think therefore that this was a fatal mistake, as it has be en put by the defence.

It was seriously contended that the Court was wrong in assessing and estimating the value of the evidence of some of the witnesses of the prosecution on the one hand, and in attaching little or no weight to some witnesses of the prosecution and witnesses for the defence on the other hand. It is hardly necessary for us to state again that the trial judge has advantage over us in assessing the evidence of the witnesses whom they hear and their demeanour they watch. For a trial judge in commenting on the reliability or unreliability of a witness it is not unusual to give some reason or pass a remark but speaking from experience on the bench, a judge rarely gives his reasons exhaustively in believing or disbelieving a witness. Therefore, it appears to us unjustified to question the finding of a trial court as to the credibility of a particular witness or the untruthfulness of another by merely catching a remark which a judge might make in his judgment. The assessment of the value of the evidence of a witness is a matter eminently within the province of the trial judge and cannot easily be questioned by a superior court.

The evidence of the eye-witnesses Direkoglou and P .C. Mehmet Ismael which was accepted by the trial Court was carefully examined by them and we feel that they were justified in accepting their evidence; both these witnesses had time and opportunity to see and recognize the fugitive and the most searching cross-examination does not appear to have shaken their evidence. The possibility of their making a mistake or having inadequate time for observation in order to be able to recognize the fugitive was all brought to the attention of the trial Court by the able counsel of the defence and it was, no doubt, fully considered before a verdict of guilty was reached. In this case there was indeed, as it has been mentioned earlier in our judgment when the evidence was summarized, circumstantial evidence of a rather strong nature which goes a long way to implicate the appellant in this crime. The explanation given by the defence for the inculpatory conduct of the appellant after the commission of the offence was also duly considered by the trial Court and rejected. We do not think that they were unjustified in doing so.

There is no evidence to support the contention that the trial was conducted in an atmosphere of suspicion and prejudice. The gravity of the offence with which the appellant was charged would naturally cause some strain during the proceedings at the trial but we are satisfied that this did not prevent in any way the appellant from having a fair trial.

Under the last ground of appeal headed "substantial miscarriage of justice" it has been submitted that after the bicycle of the appellant was seized by the Police near the scene of the crime where it was abandoned

by the fugitive, the prosecution jumped to the conclusion and fixed the crime on the appellant or at any rate they started investigations under a grave suspicion against the accused and from this web of suspicion the defence suffered at the trial. The finding of the bicycle of the appellant in the circumstances described naturally gives rise to a certain amount of suspicion connecting him with the crime but ample opportunity was given to him to explain out and dispel such suspicion if it had unjustly arisen. The explanation given was carefully examined and rejected by the trial Court.

*For these reasons we think that the appeal should be dismissed.*

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The appeal to the Judicial Committee of the Privy Council was heard before Lord Goddard (Lord Chief Justice of England), Lord Oaksey, Lord Tucker, Lord Keith of Avolholm, and Lord Somervell of Harrow and judgment was delivered on the 13th April, 1956, by:

LORD OAKSEY: 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 ju14isdiction 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, *Renoul 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 occur14ed. 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 be en proved, the conclusion come to has been a just one".

It is necessary for their Lordships therefore to consider whether looking at the pı4oceedings as a whole and taking into account what has been properly proved the conclusion come to has be en a j list 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 fire d 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 A venue, 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 murderer, 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 café 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 pa per 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 continue d 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 ViIIage. 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 black 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 be en

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.*