

Supreme Court rejects appeal against detention order in sexual assault case



20 August 2019 | Contributed by Elias Neocleous & Co LLC

Litigation, Cyprus

- 🔍 Facts
- 🔍 Appeal
- 🔍 Decision

Facts

The defendant in a recent case before the Larnaca Permanent Assize Court was accused of raping a Danish student in Oroklini village in the Larnaca area on 1 October 2018 in violation of Articles 144 and 145 of the Criminal Code (Cap 154).

The prosecution charged the defendant on 6 June 2019; he denied the accusation. The hearing was set for 19 September 2019 and the court agreed to the prosecuting authority's request to detain the appellant until trial due to the risk of him absconding.

The defendant filed an appeal before the Supreme Court, **(1)** claiming that his detention order was invalid and sought to overturn the first-instance decision based on:

- the testimony placed before the court, which was essentially based on the complainant's testimony, had speculated on his guilt; and
- the apparent risk of him absconding, claiming that he had not left Cyprus in the five months after having allegedly committed the crime even though he had had every opportunity to do so.

Appeal

The Supreme Court proceeded to examine the first ground of appeal by setting out a summary of the testimony based on the statements before it. **(2)**

In order to investigate the complaint, the police secured photographic material from the CCTV of the bar where the alleged assault had taken place and asked the complainant to come to Cyprus to identify the person who had allegedly raped her. She identified the appellant, stating that she was almost certain that he had assaulted her.

An arrest warrant was issued against the appellant and after being cautioned, he declared his ignorance of the incident. While being transferred to the police station, the appellant told the police that "I do not deserve to live, I want to die, please shoot me". Further, when the complainant reported the alleged assault to the police, she gave them the clothes that she had worn at the time. The clothing was sent to the Institute of Genetics and Neurology for analysis and traces of the appellant's DNA was found.

Based on the above, the Supreme Court affirmed as follows:

It is clear that the testimony which the Assize Court of Larnaca had before it, was indicative of the guilt of the Appellant and the relevant claims of his lawyer to the contrary, cannot be accepted. In this respect, we recall that according to the case law (see Georgi Tasev v. Police, p. 72/2016 dated 26.5.2016, Markidis et al., Democracy, pp. 50/2017 and 51 / 2017 of 22.3.2017, Evripidou v. Police (2007) 2 AD 337 and Malas N. Police (2008) 2 AA 135), the Court of First Instance is the eminent judge of the evidence, which doesn't enter into the evaluation of it, before the hearing of the case at a later stage. The Court of Appeal intervenes merely... where it is shown that the testimony and evidence before the Court of First Instance is lacking probative force or its strength is obviously weak.

Consequently, the Supreme Court, in its *ex tempore* judgment, stated that:

the Assize Court rightly considered that the three objective criteria of inherent risk of frivolity – the seriousness of the offense, the probability of conviction and the possibility of strict punishment – had been met and consequently there was no room for intervention by the Supreme Court in relation to the appellant's complaint that the testimony before the Assize Court had no likelihood of determining his conviction.

Further, as far as the second ground of appeal was concerned, the Supreme Court stated that it was clear that for the five months before his arrest, the appellant had had the opportunity to but did not leave Cyprus. This fact had also been considered by the first-instance court, which stated the following in its decision:

The fact that the accused is a Civil Asylum Seeker and remained in Cyprus from the date of the complaint by the complainant until his arrest on March 3rd, 2019, although he had not been asked to, suggests that this element, as the case law suggests, does not in any way negate the danger of escape of the accused on the basis of the abovementioned parameters. After all, in the passage of time, the accused has also been linked to the rape via genetic material.

Decision

The Supreme Court quashed the appeal and stated as follows:

We have nothing to add to the points raised by the Assize Court, which finds us in agreement. It is simply recalled that the detention of an accused until the trial is at the discretion of the Court of first instance and based on the circumstances of the case, the Assize Court exercised it within the proper framework. Therefore, there is no margin of intervention by the Supreme Court.

For further information on this topic please contact Maria Hadjisavva at Elias Neocleous & Co LLC by telephone (+357 25 110 110) or email (maria.hadjisavva@neo.law). The Elias Neocleous & Co LLC website can be accessed at www.neo.law.

Endnotes

(1) *Livanus v The Republic of Cyprus*, Criminal Appeal 72/2019, dated 11 July 2019.

(2) For details of the complainant's testimony see here.

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription.



Maria Hadjisavva