

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS

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[TRIANTAFYLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

ATHINA AGATHOCLEOUS.

Appellant.

v.

THE REPUBLIC,

Respondent

(*Criminal Appeal No. 3685*).

Criminal Law—Sentence—Homicide—Twelve years' imprisonment—Possibility that crime was not committed by appellant alone cannot be reasonably excluded—Wrong in principle that she should bear alone the full brunt of what happened—Sentence reduced.

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The appellant was convicted on her own plea of guilty of the offence of homicide and was sentenced to twelve years' imprisonment.

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She threw two stones at the victim whilst the latter was lying on the ground after he had been slapped by appellant's husband following an altercation between them at night time. The injuries on the deceased were such that in order that they could be caused there ought to have been involved far graver application of force than the two stone-throwing acts of the appellant:

so, the possibility could not be reasonably excluded that, in the darkness, and in the confusion that was prevailing, others, such as her three co-accused*, had, also, the opportunity to, and actually did, injure fatally the victim.

On appeal against sentence:

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Held, allowing the appeal, it appears to be quite likely that the appellant was made to pay alone, when she was punished, for what others did, too, in causing the death of the victim. For this reason we have decided to reduce the sentence of the appellant to one of nine years' imprisonment; it does appear to us to be wrong in principle that she should bear herself alone the full brunt of what happened (see Thomas on Principles of Sentencing (1970), pp. 79-80).

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Appeal allowed.

Appeal against sentence.

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Appeal against sentence by Athina Agathocleous who was convicted on the 26th January, 1976, at the Assize Court of Paphos (Criminal Case No. 3577/75) on one count of the offence of homicide contrary to section 205 of the Criminal Code Cap. 154, as amended by Law 3/62, and was sentenced by Savvides, P.D.C., Demetriou, S.D.J. and Kronides, D.J. to twelve years' imprisonment.

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E. Efsthathiou with *D. Koutras*, for the appellant.

S. Nicolaidis, Senior Counsel of the Republic, for the respondent.

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The judgment of the Court was delivered by:

TRIANTAFYLLIDES P.: The appellant appeals against the sentence of twelve years' imprisonment which was passed upon her by the Paphos Assizes when she pleaded guilty to the offence of homicide, contrary to section 205 of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1962 (Law 3/62).

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The injuries which caused the death of the deceased were inflicted on November 30, 1975, and he died on the following day, December 1, 1975.

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The events which led to the death of the victim took place in the village of Asproyia, in the District of Paphos, in a narrow,

* A *nole* *prosequi* was filed in so far as they were concerned.

badly lit, street, on the evening of November 30, 1975. It was getting dark and the weather was bad. The victim was coming out of a house, with three other persons, when they met the husband and the two sons of the appellant.

5 The husband and sons of the appellant were co-accused of hers before the Assize Court, but a nolle prosequi was filed in so far as they were concerned and, thus, the proceedings against them were discontinued.

10 It is not in dispute that an altercation took place between the husband of the appellant and the victim, with the result that the latter was slapped so hard in the face by the former that he fell down in the street, flat on his back. The surface there was stony and hard, and, as it appears from photographs, which form part of the record, there were some quite big stones
15 lying about.

The appellant, whose house is nearby, heard the noise and obviously wanting to see what was happening, and fearing that members of her family were in danger, arrived at the scene holding a big stone which she threw at the direction of the
20 victim, as he was lying on the ground; and, some time later, she was seen near the victim, holding the same or another stone, which she let fall towards his head; at the time, there was heard a sound as if two stones had struck each other.

25 Apparently, due to the darkness, it was not possible to see any stone actually striking the victim; but, as the appellant has pleaded guilty to killing him, it can safely be deduced that she did inflict injuries which caused his death.

30 These injuries were very extensive and are indicative of a homicide of a very brutal kind. Had we been satisfied beyond any doubt that the crime was committed by the appellant alone, that is that the said injuries were inflicted by her only, we could not have regarded the sentence passed on the appellant as being in any way excessive.

35 But, the injuries found on the deceased are such that in order that they could be caused there ought to have been involved far graver application of force than the two stone-throwing acts of the appellant; so, the possibility cannot be reasonably excluded that, in the darkness, and in the confusion

that was prevailing, others, such as her co-accused, had, also, the opportunity to, and actually did, injure fatally the victim; in other words, it appears to be quite likely that the appellant was made to pay alone, when she was punished, for what others did, too, in causing the death of the victim. 5

For this reason we have decided to reduce the sentence of the appellant to one of nine years' imprisonment; it does appear to us to be wrong in principle that she should bear herself alone the full brunt of what happened.

As it is very aptly pointed out in Thomas on Principles of Sentencing (1970), pp. 79-80, in a case of manslaughter the severest sentence is usually fifteen years' imprisonment and sentences in particular cases are scaled downwards according to the circumstances of each individual case. 10

In the result, this appeal is allowed accordingly. 15

Appeal allowed.