1961
March 28,
June 13, 16

THE ATTORNEY-GENERAL
v.
1. KYRIACOS N. KOUPPIS
2. MELIOS A. IOANNIDES
3. IOANNIS G. HALLAS

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,

v.

1. KYRIACOS NICOLA KOUPPIS,
2. MELIOS AGAMEMNON IOANNIDES,
3. IOANNIS GEORGHIOU HALLAS,

Respondents.

(*Criminal Appeal No.* 2331).

Criminal law—Criminal procedure—Sentence—Appeal against sentence by the Attorney-General—The Courts of Justice Law, 1960, *section* 25(2)*—Sentence manifestly inadequate—The High Court in dealing with appeals against sentence should only consider facts appearing on the record—Therefore the depositions taken at the preliminary inquiry should not be looked at.*

Counsel appearing for the prosecution—Duties.

Firearms and explosives—Offences of carrying, possessing, using etc. etc. contrary to the Firearms Law, Cap. 57*—Seriousness of—The rule of law is the overriding consideration in imposing sentence in such cases—Outweighing considerations based on facts of recent history.*

The appellants were jointly charged before the Assize Court of Nicosia upon nine counts, (1) for using pistols, (2) carrying pistols, (3) carrying explosives without licence, (4) carrying arms to terrorize, (5) assaulting Police, (6) obstructing the Police in the execution of their duties(7) wounding (8) possessing pistols and (9) possessing explosives. They pleaded not guilty to all counts except count 2 to which they pleaded guilty. Counsel for the Republic thereupon accepted the plea on count 2 and stated that he would offer no other evidence on the remaining counts. The trial court, after discharging the appellants upon the counts to which they pleaded not guilty proceeded in the ordinary way on count 2. It seems that the evidence disclosed on the depositions was such that counsel for the Republic ought not to have refrained from proceeding on a number of the more serious charges.

Be that as it may, the Assize Court, after hearing the facts relevant to the offence charged in count 2 and what had been urged in mitigation by counsel for the accused, sentenced each accused to a fine of £25. The plea in mitigation was to

the effect that the accused were EOKA fighters, possessing the firearms in question in relation to the armed struggle for the liberation of Cyprus and that they intended to deliver them to the Authorities as requested by a public broadcast by the Minister of Interior.

The Attorney-General, acting under section 25(2) of the Courts of Justice Law, 1960, appealed against that sentence on the ground that it was manifestly inadequate for the offence to which the appellants pleaded guilty. In the course of the opening before the High Court the Attonrey-General sought to put before the Court facts disclosed in the depositions taken at the preliminary inquiry, but not put before the trial court by the prosecution.

Held: (1) In considering whether a sentence is manifestly excessive or manifestly inadequate, the High Court will only take into consideration the facts as they appear on the written record before them.

(2) (O' BRIAIN, P. *dissenting*):

(a) The Assize Court have accepted the appellants' version that they were intending to deliver their arms to the Authorities as requested by a public broadcast by the Minister of Interior, and, mainly upon that ground, imposed a sentence of £25 fine. But the evidence in the case points strongly in the opposite direction. The appellants' story is utterly unbelievable.

(b) The sentence is, therefore, manifestly inadequate and' regard being had to all the circumstances, is increased to a sentence of six months' imprisonment from to-day.

(c) *Per VASSILIADES, J:* It is unacceptable that any one who may have worked in the making of this Republic of ours, will now be allowed to work its breaking; especially the breaking of its laws. The same sense of duty to the country, which may have prompted the use of arms in those difficult years, now dictates the handing over of such arms to the Republic.

(d) *Per JOSEPHIDES, J:* As for the statement that the appellants used their arms in the struggle for the independence of Cyprus, suffice it to say that it is a fundamental principle that no person should be above the law. The rule of law is

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the badge of free people. It stands for equality of all citizens before the Law, and it is the duty of the Courts of the Republic to enforce the law without fear or favour.

Appeal allowed. Sentence of £25 fine increased to one of six months' imprisonment from to-day.

Cases referred to:

R. v. Soanes (1948) 1 All E.R. 289.

Per VASSILIADES, J.: In a case where the accused were committed by a Judicial Officer, for trial by an Assize Court, on charges for carrying and using pistols to terrorize people, and for assaulting the police when they attempted to take away from the accused these dangerous weapons, the prosecuting counsel accepted a plea of guilty to a count for mere carrying of the arms, and offered no evidence on eight other counts of serious nature, upon an information prepared at the office of the Attorney-General without consulting him before taking such course.

In the circumstances, it seems to me that the Attorney-General is fully justified in feeling the anxiety which he apparently feels about this case; and in taking the course which he has taken in the public interest.

A public prosecution in a case of this nature, is a serious matter; and if the Attorney-General is not satisfied that the course taken on his behalf, without his consent, was proper, he must, I think, take the necessary steps in that direction.

Per JOSEPHIDES, J.: There is clear authority what is the duty of prosecuting counsel in presenting a case to the Court (*R. v. Soanes* (1948) 1 All E.R. 289 at p. 290). It is his duty to present the offences charged in the information, leaving it to the Court to find the proper verdict. In this case the Court was bound to insist on the accused being tried for using the pistols if, as stated by the Attorney-General in this Court, there was nothing disclosed on the depositions which would have justified a charge of carrying only; and it would be for the Court to say whether the verdict should be guilty. of carrying or using. On the Attorney-General's statement of facts in this Court, it would appear that counsel for the prosecution before the Assize Court has failed in his

duty, and it is for the Attorney-General to consider what action should be taken in the matter.

Had the facts stated by the Attorney-General before us been put before the trial court, it would have been an extremely serious case calling for a very severe punishment. But as those facts were not put before the trial court we shall consider this appeal on the facts opened by counsel for the prosecution before that Court.

Appeal against sentence by the Attorney-General.

The respondents were convicted on their own plea at the Assize Court of Nicosia (Criminal Case No. 12493/60) on one count of the offence of carrying pistols, contrary to s. 4(1)(2) of the Firearms Law, Cap. 57, as amended by s.3 of Law 11 of 1959, and were sentenced by Stavrinides, P.D.C., Hji Anastassiou and Ioannides D.JJ. to pay a fine of £25 each.

Cr. G. Tornaritis, Attorney-General, with *A.E. Munir* for the appellant.

A. Triantafyllides with *M. Spanos* for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgments of the Court delivered by:—

O' BRIAIN, P.: In this case the Attorney-General appeals against the sentence imposed on each of the accused on the grounds that they were manifestly insufficient.

Accused were jointly charged and returned for trial upon evidence that they had, inter alia, carried arms in a manner to terrorize persons, used firearms, assaulted and obstructed the Police and wounded a man. The Attorney-General filed in the Assize Court of Nicosia an information charging the accused jointly upon nine counts as follows:—

Count No. 1 using pistols contrary to the Firearms Law.

Count No. 2 carrying pistols contrary to the Firearms Law.

Count No. 3 carrying explosives without a licence.

Count No. 4 carrying arms to terrorize.

Count No. 5 assaulting Police.

Count No. 6 obstructing the Police in the execution of their duties.

Count No. 7 wounding.

Count No. 8 possessing two pistols without a special permit.

Count No. 9 possessing explosive substances without a licence.

The accused were duly arraigned and pleaded not guilty to all counts save Count 2 to which they pleaded guilty. Counsel for the Republic thereupon stated to the trial court "I accept the plea and offer no evidence on all other counts". The Court thereupon purported to discharge the accused upon counts 1, 3, 4, 5, 6, 7, 8, and 9, which can only be read as an acquittal of all the accused upon all those said counts.

The trial then proceeded in the ordinary way upon count 2. Counsel for the Republic stated to the court the relevant facts concerning the offence charged in that count and Mr. Triantafyllides, who appeared for the accused, addressed the court in mitigation of sentence, admitting in the course of his address that the facts had been fairly put by the Prosecution.

It is a fundamental principle in these courts that they are bound by the Law of Evidence and are entitled to act only upon facts proved or admitted, save where facts are such that the courts will take judicial notice of them. Accordingly the Judges of the trial court, in this case, were bound to consider the question of sentence upon the facts admitted before them, divorced from any knowledge they might have of the case, *aliunde*, and on the basis that each of the accused was innocent of the charges upon which no evidence had been offered by the Republic. This Court hearing this appeal has the duty to the accused to act in the same way.

It seems to me that the Attorney-General sought to put before this court a picture quite different from that painted by prosecuting counsel at the trial. He quoted an English Authority to the effect that a judge considering whether he will exercise his discretion and permit a charge of murder to be reduced to one of infanticide, is bound to look at the depositions. Upon that Authority he proceeded to read in this

Court the depositions taken at the preliminary inquiry which, of course, related to eight other charges upon which the trial court had properly acquitted the accused. He painted a picture of truly grave misconduct on the part of these young men. Mr. Triantafyllides objected to the reading of these depositions and in my view that objection was correct in point of law and in considering this case I shall put out of mind, so far as I can, anything which appears in the depositions other than that which is upon the written record before us. Before leaving this aspect of the case I may add that if the case was one of the nature suggested by the Attorney-General, I have difficulty in understanding how the prosecution felt justified in taking the course which they did in regard to eight of the counts in the information, but, I entertain no doubt that having done so the Attorney-General is bound, in this Court, by what was done. I have even less doubt that this Court is equally bound thereby and that it is the legal right of these three accused to have the appeal considered upon the basis of the facts put before the trial court.

Now, what does the record show? All the accused are young men, the eldest being only 23 years ; they have borne good characters up to the present. They served during the period of the EOKA campaign in that organization, using, in the struggle for Cyprus independence, the pistols, the subject matter of count 2. According to the law of the Colony of Cyprus they were at all times acting illegally. Nevertheless, I merely recite the facts of history when I say that the Republic, whose Flag flies over this Court-house, the Attorney-General who prosecutes them and this Court which now has the duty of trying their case, very largely owe their existence to the actions of these young men and their comradess in arms. When a settlement was finally arrived at, the new Government of the Republic realised that the public well being required that all arms should be brought under the control of the lawful Government and an appeal was issued by the Minister of the Interior asking all persons who were in unlawful possession of fire-arms to deliver them up within 15 days and adding, and I cannot fail to think that this addendum was important, that no steps would be taken against them if they did so. I do not know what is the authority for that offer of immunity but I am satisfied that the Minister in making the appeal acted wisely and in the best interest of all citizens and communities in the State and his action can very well be justified upon the principle "*Salus populi suprema*

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lex." The accused became aware of this appeal and say that they decided to go to where they had "dumped" their arms and deliver them to the Authorities before the expiration of the period mentioned. They went to Makhera Monastery and spent the night there. The following day they began to drink. Counsel for the prosecution told the Court that "they looked to be very near intoxication". They themselves say they became very drunk. They made proper nuisances of themselves, dancing on the tables, displaying their weapons and alarming the inmates of the Monastery. On the arrival of the Police they were asked if they had permits to carry arms and one of the accused replied "we have ten days before us, then we shall deliver them up". Later, some of the accused surrendered and some were arrested by the Police. In each case they gave a similar explanation of their conduct.

Accused 1 said :

> "Whatever took place was a result of drunkenness. We went there in order to take the pistols which we had hidden in Makheras. Our purpose was to deliver them up in response to the instructions of the Minister of the Interior. In the course of our drunkenness we used them in order to have the fun of them for the last time. It was a moment of folly".

Accused 2 said to the Policeman who arrested him :

> "Had I known that I was being sought by the Police I would have come myself. Whatever took place at Makheras was because we were very drunk"

Later accused 2 while being taken to Nicosia by P.C. Meshos on the 12th September, 1960, said the following to him:

> "They are trying to dramatize things. We had two pistols. They were hidden near the hide of Afxentiou. In accordance and in response to the instructions of the Minister of the Interior, Mr. Georgadjis, we decided to go on Saturday to take them and deliver them - (by Saturday he meant the 10th September). Later we decided to stay there for the night and return on the following day. On the following morning we took the pistols, and came to the coffee shop. We were sitting under a walnut tree and we were drinking.

We drank a lot, we became drunk and all these things happened".

On the same day, that is to say 12th September, Policeman Antoniades met the third accused by chance near the Police station of Larnaca. Accused 3 approached the policeman and told him the following:

"Is there anything wrong Andreas; do you want me?" Then accused 3 added :

"We have been very drunk at Macheras".

Counsel for the prosecution twice in his address to the trial court invited the court to consider what were the intentions of the accused in relation to those guns:

"One of the points your Honours will have to decide is whether the accused had the intention to deliver up the guns as alleged. As to what degree the accused had the intention of delivering up the weapons is for your Honours to decide from the facts which I have put before you".

And he concluded —

"All three accused are young people between 21 and 23 years old".

Can we be quite sure that these young men did not infer, (quite mistakenly I believe) from the terms of the Minister's appeal that it gave them a period of immunity for another ten days after the date of the incident which occurred? If they did, manifestly the carrying of those arms on this occasion is put in a very different light. Is it for us to say that this view is entirely unreasonable when counsel for the Republic twice invited the trial judges to consider the matter and these three judges unanimously accepted it as a fact? It is said that justice is sweetest when tempered with mercy. In deference to my colleague's views, which I have no difficulty in understanding and, if I may say so, appear entirely reasonable, though I do not agree with them, I have read and reread the record of the Assize Court. I am unable to conclude that the judgment was unsatisfactory or that the sentence was manifestly insufficient. I would be less than frank if I did not state that having regard to the way the case was presented to the Court by the prosecution, having regard to the circumstances and the epoch in this country's history in which

the incident occurred, to the accused's assertion that they intended to deliver the arms up at the end of the period mentioned in the Minister's appeal, to their previous good character and to the matters of history to which I have alluded, I approve of and concur in the judgment of the trial court. I would in the circumstances dismiss this appeal.

ZEKIA, J.: I agree that as a Court of Appeal in the assessment of punishment or in ascertaining whether the sentence imposed by the trial court is manifestly excessive or manifestly inadequate we have to confine ourselves to the statement of facts made before the trial court.

A distinction has to be drawn between what can be stated before a trial court and a Court of Appeal. Generally facts relevant to the charge to which a plea of guilty has been made can be put before a trial court. The prosecution can state mitigating as well as aggravating facts which are not irrelevant to the charge pleaded guilty to. But when the case comes before this Court then we have to confine ourselves to the statement of facts made in the court below. In considering the adequacy or inadequacy of the punishment we have to confine ourselves to the facts stated at the trial otherwise it may turn to be unfair to the parties of the case to introduce new facts. In a case before a trial court if aggravating facts are stated which are not accepted by an accused who pleads guilty then he has got the chance to retract his plea and apply for leave of the Court to withdraw his plea because that bears a lot on the punishment.

A plea of guilty necessarily implies that he accepts all the ingredients of the offence but does not necessarily imply that he accepts all aggravating circumstances which are not strictly relevant to the charge itself.

In this case the trial court having accepted the facts as stated by counsel for the prosecution in principle we have to view the case as it was presented. The facts as stated, I must say, could not reasonably entitle a court to come to the conclusion that the respondents in this case were intending at the time to return the arms to the Authorities they were possessing or carrying. With all respect to the trial court's and the President's view I have to discard from my mind in the assessment of punishment as mitigating circumstance the alleged intention to return to the Authorities the weapons in question.

Had it been a case of possessing or carrying a gun and doing nothing else, the man who carries it within the time limit whether he intends to return it or not, it may not be of consequence because he may form the intention later at any moment before the lapse of 15 days fixed by the Authorities for the surrender of arms. In that case he would be entitled to the maximum leniency a Court of Law could exercise. But as I cannot share that view in the circumstances of this case, there remains the violation of the law without the intention whatsoever of surrendering the guns. The accused carried the weapons in the monastery and alarmed all the people there and they made a nuisance of themselves in flagrant violation of the law of this country.

In the circumstances, with all possible leniency taking into account that the respondents were kept in suspense for a long time for the determination of this appeal, I would not impose on them less than six months' imprisonment; and in my view the sentence should be varied and a sentence of six months' imprisonment from to-day should be substituted.

VASSILIADES, J.: This is an appeal by the Attorney-General against the sentence imposed by the Assize Court of Nicosia in an arms-case.

The three appellants were convicted for carrying pistols contrary to section 4(1)(2)(a) of the Firearms Law (Cap.57) as amended by section 3 of Law 11 of 1959, a statutory offence carrying 10 years imprisonment and £800 fine; and were sentenced to £25 fine each.

Against this sentence the Attorney-General of the Republic appeals on the ground that it is manifestly inadequate, in the circumstances of the case, and the conditions now prevailing in the Island regarding the carrying and use of such arms.

The appeal was made under the provisions of section 25(2) of the Courts of Justice Law, 1960, enacted by the House of Representatives of the Republic in December last. The constitutionality of the provisions regarding such appeals, was questioned by counsel for the appellants, and the matter had to be referred to the Constitutional Court with the result that the case came back to be dealt with by this Court, after a few weeks' delay.

In presenting his appeal, the Attorney-General considered

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himself bound by the way in which this serious, in his opinion, case was put before the trial-court by the advocate who conducted the prosecution on his behalf.

In a case where the accused were committed by a Judicial Officer, for trial by an Assize Court, on charges for carrying and using pistols to terrorise people, and for assaulting the police when they attempted to take away from the accused these dangerous weapons, the prosecuting counsel accepted a plea of guilty to a count for mere carrying of the arms, and offered no evidence on eight other counts of serious nature, upon an information prepared at the office of the Attorney-General without consulting him before taking such course.

In the circumstances, it seems to me that the Attorney-General is fully justified in feeling the anxiety which he apparently feels about this case; and in taking the course which he has taken in the public interest.

A public prosecution in a case of this nature, is a serious matter; and if the Attorney-General is not satisfied that the course taken on his behalf, without his consent, was proper, he must, I think, take the necessary steps in that direction.

But as far as the appellants are concerned, what was said and done at the Assize Court on behalf of the Attorney-General, is binding upon him. And this appeal must be decided upon that measure. The Attorney-General has, rightly, conceded this.

The appeal must therefore be confined to the question whether the sentence of £25 imposed by the trial-court, is manifestly inadequate for the offence to which the appellants have pleaded guilty, committed in the circumstances stated in Court for the purposes of sentence.

The offence of carrying arms is admittedly a very serious one. The appropriate Authority in the Country have legislated to this effect. As we all know, unfortunately, they had very good reasons for doing so.

The Courts of the Island have, time after time, expressed themselves to the effect that in the eye of the law these are serious cases; and gave warning to all concerned, of the serious consequences that the illegal carrying or using of such weapons may have. They gave sentences of imprisonment, invariably coupled with strongly worded warnings.

The general public have so frequently before their eyes the most undesirable conditions which the carrying of arms by unauthorised persons, create. Every one knows that the possession and use of these arms is not only dangerous to individual members of the public, but it strikes at the very roots of the existence and the reputation of our young State.

And yet there are persons who persist in possessing and using arms for their own purposes. I hold firmly to the view that it is the duty of every one concerned with the application and enforcement of this State's Law, to see that such persons take the full consequences of their acts. If the Courts will not apply the law and uphold its rule, who will?

With all due deference to the realistic remarks of the President of this Court, as to the events of recent history regarding the use of arms in this country, I have this to say: Having lived those years here, with all their hardships, and having shared with my fellow-countrymen their difficulties, their anxieties and their joys, I know that with the exception of those few who, same as in other countries, have sold themselves to a very willing and generous buyer of human corruption, the rest of the people of Cyprus have, each within his own limitations, done fully their part in the hard struggle to rid the country of foreign Rule. Now that the Island has attained its independence, every citizen of the new State is entitled to share equally the fruits of that attainment; and is bound to do his part in maintaining it.

It is unacceptable that any one who may have worked in the making of this Republic of ours, will now be allowed to work its breaking; especially the breaking of its laws. The same sense of duty to the country, which may have prompted the use of arms in those difficult years, now dictates the handing over of such arms to the Republic.

These appellants kept their arms for over 18 months after the time when they should have handed them over. Their case is that they had them concealed in a hide-out near Makheras Monastery during this period, and that they went there the day before the offence in order to take them up and deliver them to the Authorities as requested by a public appeal broadcast by the Minister of the Interior.

Prosecuting counsel left it to the trial court to decide whether that was really the intention of the appellants when

they were carrying the pistols at the material time. He took no stand in the matter, notwithstanding the evidence in his hands. The Assize Court have accepted appellants' version, and mainly upon that ground, they imposed a sentence of £25 fine on each of the accused.

After listening carefully to all that has been said in this appeal, I regret to say that I find myself completely unable to accept the version of the appellants as true.

There is nothing on the record to show that the intention of the appellants was to take their arms from a hide-out in order to hand them over to the Authorities. The evidence in the case points strongly in the opposite direction. I find their story utterly unbelievable.

If their intention was to deliver the pistols to the Authorities, one would expect them to say so to some responsible person, or to some one at the Monastery when they took them out of the alleged hiding place. And when a group of policemen came to take them from the appellants, they would have handed them over. Their conduct on and after the arrival of the Police was entirely inconsistent with such intention.

If appellants' story about an intention to deliver the pistols to the Authorities forthwith be rejected as untrue, the very foundation of the ground upon which the Assize Court measured their sentence, disappears. And the duty is cast upon this Court to impose the appropriate sentence for the statutory offence of carrying a pistol.

I have already referred to the punishment provided by law and to the seriousness of the offence. After discussing the matter with the other members of this Court, I came to agree with my Cypriot colleagues that considering the young age and good character of the appellants, as well as the anxiety which they must have gone through during the long period this case has taken in its different stages before various Courts, a sentence of six months imprisonment from to-day may meet the case, although personally I take the view that this is an extremely lenient sentence for such an offence, and should not be taken as a precedent.

I think that the time is ripe for warnings and leniency to give way to deterrent sentences.

JOSEPHIDES, J.: I shall deal first with the Attorney-General's submission that the full facts were not put before the Assize Court by counsel for the prosecution. There is clear authority what is the duty of prosecuting counsel in presenting a case to the Court (*R. v. Soanes* (1948) 1 All E.R 289 at page 290). It is his duty to present the offences charged in the information, leaving it to the Court to find the proper verdict. In this case the Court was bound to insist on the accused being tried for using the pistols if, as stated by the Attorney-General in this Court, there was nothing disclosed on the depositions which would have justified a charge of carrying only; and it would be for the Court to say whether the verdict should be guilty of carrying or using. On the Attorney-General's statement of facts in this Court, it would appear that counsel for the prosecution before the Assize Court has failed in his duty, and it is for the Attorney-General to consider what action should be taken in the matter.

Had the facts stated by the Attorney-General before us been put before the trial court, it would have been an extremely serious case calling for a very severe punishment. But as those facts were not put before the trial court we shall consider this appeal on the facts opened by counsel for the prosecution before that Court.

The facts were that in the morning of the 11th September the three accused, after having a few drinks, displayed their pistols in a cafe at Makheras Monastery, and they alarmed the inmates of the monastery. At 3 p.m. on the same day the Police arrived there and asked the three accused to deliver their guns. The accused refused, and, according to the statement of prosecuting counsel, one of the accused, that is, accused No. 1, went so far as to ask one of the policemen to deliver up his rifle. The police then left without effecting any arrest. Accused No. 2 was arrested at 1.15 a.m. on the 12th September, and accused No.3 was arrested later in he morning of the 12th September,. The pistols were found on the 13th September in the car of accused No. 2 on information given by accused No.2 and 3 to the Minister of the Interior while they were in custody. Accused No.1 surrendered on the 16th September.

On these facts, as opened before the Assize Court, three points arise for consideration : (1) that the three accused had pistols in their possession which they displayed in a cafe

at Makheras Monastery and they alarmed the inmates of the monastery ; (2) in the afternoon of the same day, when the police arrived at the spot, they refused to deliver their guns; and (3) they volunteered information *after* their arrest and after they had been in custody.

In these circumstances I am not satisfied that the Assize Court was justified in drawing the inference that the accused intended to deliver their pistols. Government's appeal to deliver arms was not a general licence to carry arms, but a promise not to prosecute if arms were delivered within a certain time limit. Although accused had ample opportunity to deliver their arms either to the police at Makheras or later, before they were arrested, they failed to do so.

As for the statement that the accused used their pistols in the struggle for the independence of Cyprus, suffice it to say that it is a fundamental principle that no person should be above the law. The rule of law is the badge of free people. It stands for equality of all citizens before the law, and it is the duty of the Courts of the Republic to enforce the law without fear or favour.

For all these reasons I consider that the sentence imposed by the trial Court was manifestly inadequate. Taking into account the good record of the accused, the delay in the determination of the proceedings against them and their anxiety over a considerable period of time, I am of the opinion that a sentence of six months' imprisonment would be an adequate punishment in the present case.

O' BRIAIN, P.: In the result the appeal of the Attorney-General is allowed and the sentence of six months' imprisonment as from to-day is imposed on each of the accused on count 2 by a majority vote of this Court.

Appeal allowed.