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CHARALAMBOS
TRYFONA
ALIAS ALOUPOS
v.
THE REPUBLIC

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

CHARALAMBOS TRYFONA ALIAS ALOUPOS

Appellant

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2412)

Criminal law—Sentence—Principles upon which sentences should be assessed—Prevalence of the offence—Chances to the offender to reform—Protection of the citizen—Appeal—Principles upon which the High Court will interfere with sentences—Young offenders—Penology—Trends of modern penology regarding youngsters—Adjustment of such trends to local conditions—Desirability for the establishment in Cyprus of institutions similar to “Borstal Institutions” in England.

Housebreaking at night time—The Criminal Code, Cap. 154, section 292(a).

The appellant, a young man of twenty one years of age, was convicted on his own plea for breaking into a dwelling house at night time and stealing therefrom money and other property of the value of £55, contrary to section 292(a) of the Criminal Code. He asked the court to take into consideration seven other outstanding cases of similar nature. He admitted also eleven previous convictions, mostly of similar nature. The maximum penalty carried under section 292(a) of the Criminal Code is ten years' imprisonment. The trial Court sentenced the appellant to six years' imprisonment. On appeal against sentence:

Held (O' BRIAIN, P., dissenting):

(1) In the circumstances of this case the sentence imposed by the trial Court should not be disturbed.

(2) *Per ZEKIA, J.:* There was no other alternative course open to the trial Court so as to prevent the appellant from committing again such similar offences.

(3) *Per VASSILIADES, J.:* (a) It is quite correct that there is now a school of thought inclined to the view that long sentences do not achieve their purpose. Without

wishing to embark on theories, I pose the question: What purpose?

Admittedly one of the purposes of a sentence is to help the offender to become a good citizen, and return him to the community as such. But alongside with the offender, the judge must consider the interests of the community. And another purpose on a sentence is to protect the community against offenders, to protect the law-abiding citizen against the aggressor who has no respect for the law; to protect the hundreds or thousands of people who wish to live in peace and safety under the rule of law, against the few, who persistently disturb peace and good order in the community, in illegal pursuit or personal advantage. And this, in my opinion is just as important a purpose as the reforming of the offender.

(b) I take the view that the Court of Appeal should be very slow in disturbing sentences imposed by Assize Courts consisting of three local judges; and that we should abstain from doing so unless there are sufficiently strong grounds.

(c) In the present case, the sentence imposed was, in the circumstances, an appropriate application of the law for the protection of the community as a whole and for the reform of the appellant personally. It will enable him to grasp the realities which will help him to change his mode of living, and to practise his good resolutions for sufficient time to become part of his habits and character. A short sentence cannot do this.

(4) *Per JOSEPHIDES, J.:* Although if I were the trial judge I would feel inclined to impose a lesser sentence, nevertheless, having regard to the circumstances of this case and the principles applicable to appeals against sentence, I do not consider that the sentence of six years' imprisonment is manifestly excessive

Appeal dismissed. Sentence of six years' imprisonment affirmed, to run from the date of conviction.

Per JOSEPHIDES, J.: It is a pity that in Cyprus we have no "borstal institutions" as in England. Young men of the age of sixteen and upwards can be committed to these institutions to be trained and given a chance to reform. I am in a position to know that during the past seven or eight

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years the Courts in Cyprus have repeatedly asked the legislature to establish such institutions, but without any result. I now take this opportunity of expressing the hope that the responsible authorities in our new Republic will consider establishing the borstal system in Cyprus at the earliest possible moment.

Appeal against sentence.

The appellant was convicted on the 25.9.61 at the Assize Court of Limassol (Criminal Case No. 9332/61) on one count of the offence of burglary, contrary to section 292(a) of the Criminal Code, Cap. 154 and was sentenced by Michaelides P.D.C., Limnatis and Demetriou D.JJ. to six years' imprisonment.

Appellant in person.

S. Georghiades for the respondent.

The judgments of the Court were read by:

O' BRIAIN, P.: In this case the appeal is against the sentence of six years' imprisonment on the grounds that it is excessive. The appellant is undefended here and has made his case on his own behalf as best he could.

As I understand it, the point he makes is that, having regard to sentences in certain other cases, this sentence is excessive and unbalanced. He was charged with burglary and stealing property to the amount of £55.- odd; no violence of any kind was used or threatened. He asked the Court to take into consideration a number of other offences: one case of burglary, involving the taking of property valued at £25 and the remaining five or six cases, I think, can only be described as "petty larceny". For those offences, he has received a sentence of six years' imprisonment at the age of 21.

The learned trial Judge has described the case as being a "very serious one". With great respect to the trial Judge I think that is rather overstating the matter. However, I have considered the matter earnestly in deference to the views of my colleagues here to-day. I concede readily that they are probably more conversant with local conditions than I am. I readily admit that is a factor to be taken into consideration. But, in my view, there are other matters to be

considered as well. Penologists throughout the world, who have made a study of punishment of crime are, I think, in agreement that long sentences on young people do not necessarily reform them or safeguard the community. There is a strong volume of opinion that it merely confirms such youngsters in criminal ways and creates enemies of society. I may be wrong in my views, but I cannot imagine any Court in England or my own country passing a sentence of six years' imprisonment in this case. I say, although my colleagues may not agree with me, that if this sentence is confirmed, the Courts here are completely out of step with the Courts certainly in Europe. But for the fact that my colleagues and I take different views I would not hesitate to use strong language about this sentence passed on this young man in the circumstances of this case. I content myself with saying that I cannot at all agree that the sentence is not excessive, even taking into consideration his criminal record and the fact that we are told by counsel for the Republic that the crime was prevalent in this district. I would have thought a sentence of two, or three years at the most, would have been appropriate, balanced and just, and I for my part would allow this appeal.

ZEKIA, J.: With all respect to the views expressed by the President and also to the statements made by penologists in the circumstances of this case, I am of opinion that the sentence imposed by the trial court is not manifestly an excessive one. We are dealing with a prisoner-appellant who had eleven previous convictions, most of them similar to his last offence. He has been given the chance to reform and has been given shorter terms of imprisonment, but without any result. He is a type of a person who as soon as he comes out of prison he commits similar offence or offences.

Well, in this particular case, another pending seven offences similar to the one under consideration have been on the request of the appellant taken into account. Had this man received consecutive sentences he might have stayed for the rest of his life or a great part thereof in prison instead he is given six years' imprisonment. It is up to him in the first instance to make use of this period of imprisonment in order to reform himself. On the other hand, it is one of our primary duties to protect the law abiding citizens against habitual thieves and burglars. I am, also, satisfied that bur-

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glary is a prevalent offence in the locality the present offences have been committed.

In the circumstances and in view that there was no other alternative course open so as to prevent appellant from committing again such similar offences, I think that the appeal should be dismissed.

VASSILIADES, J.: I agree with my brother Zekia, J. that there is no substance in this appeal and that it should therefore be dismissed.

I have great respect for the views of the President of this Court who is so eagerly making use of his wide knowledge and experience in performing his very responsible duties in this country.

On the other hand, as he has quite readily conceded one year is far too short a period (compared with the many years of experience of local Judges) to enable a judge to assess correctly local conditions for purposes of sentence.

It is quite correct that there is now a school of thought inclined to the view that long sentences do not achieve their purpose. Without wishing to embark on theories, I pose the question : What purpose?

Admittedly one of the purposes of a sentence is to help the offender to become a good citizen, and return him to the community as such. But alongside with the offender, the judge must consider the interests of the community. And another purpose of a sentence is to protect the community against offenders; to protect the law-abiding citizen against the aggressor who has no respect for the law; to protect the hundreds or thousands of people who wish to live in peace and safety under the rule of law, against the few, who persistently disturb peace and good order in the community, in illegal pursuit of personal advantage. And this, in my opinion, is just as important a purpose as the reforming of the offender.

There were times in the past, when the community used to rid itself of the aggressor by putting him to death. Stealing was punishable with death or amputation of the limb. Other times when the aggressor was exiled. For years Britain rid itself of its persistent criminals by sending them away to distant lands.

In our times, this kind of defence is no longer open to the community. Criminal tendencies are considered as physical or mental irregularities, and persons with such tendencies who by their conduct appear to constitute either a danger or a nuisance to the community, are confined in institutions for appropriate treatment.

Borstals, Places for Preventive Detention, Prisons and Mental Hospitals are places where civilized communities confine, under due process of the law, those of their members who *either cannot or will not* regulate their conduct in conformity with the law, and must therefore be treated accordingly; for the benefit of the community first, and for their own benefit if possible, at the same time.

The Central Prisons in Cyprus as I know them - (and I think that every judge who administers criminal justice in the country, should keep himself acquainted with what is going on in the prisons) may not be an ideal place to live in; but provides healthy conditions, sufficient nourishment, disciplined life, physical exercise in the form of work or games, medical services, welfare services, books and religious services optional, and, for long-term prisoners, the learning of a useful trade. There is segregation of prisoners according to age, and other characteristics, and there is constant supervision, and reasonable touch with the outside world. The responsible Authority, in normal times, tries to keep a balance between humane conditions on the one hand, and making the prison too comfortable for the tough and aggressive type.

This is the kind of prison where the Assize Court of Limassol have sentenced the appellant to serve a term of six years.

Now in what circumstances did they do so?

They had before them an apparently healthy young man of 21 years of age, who stood convicted on his own plea for burglary; for breaking into a dwelling house, at night-time and stealing therefrom money and other property of the value of £55. At the prisoner's own request they were to take into consideration in passing sentence, no less than seven other cases of similar nature, pending against him, which he admitted. And looking at his past, they saw that young as this convict was, he had not less than eleven previous convictions, mostly of similar nature.

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At the age of 10 he was bound over for receiving, and was put on probation for two years; during that period he, presumably, had the advantage of supervision and advice regarding his behaviour. For the next eight years he came before the Courts on various charges about ten times. He received sentences of small fines, bigger fines, short terms of imprisonment, and longer terms; 9 months, 15 months, and in 1961 for carrying a knife, he was bound over in the sum of £100 to come up for judgment; at the same time he must have been given advice and warning. Within three months of that, he committed the serious crime for which it was now the duty of the Court to pass the appropriate sentence.

The punishment provided by law for this crime, the seriousness of which I need not describe, is ten years' imprisonment.

The Assize Court of the area, fully conscious, I am sure, of their duty to the community, as well as to the accused, have passed a sentence of six years. It is for them and not for us to measure the sentence. We can only intervene if the trial court's sentence is wrong on principle, or is manifestly excessive or inadequate.

I take the view that the Court of Appeal should be very slow in disturbing sentences imposed by Assize Courts consisting of three local judges; and that we should abstain from doing so unless there are sufficiently strong grounds.

In the present case, I think that the sentence imposed was, in the circumstances, an appropriate application of the law for the protection of the community as a whole, and for the reform of the appellant personally. It will enable him to grasp the realities which will help him to change his mode of living, and to practise his good resolutions for sufficient time to become part of his habits and character. A short sentence cannot do this.

I agree that the appeal should be dismissed and the sentence affirmed.

JOSEPHIDES, J.: I have given careful and anxious consideration to this case because I believe that young men must be given a chance to reform. It is a pity that in Cyprus we have no "borstal institutions" as in England. Young men of the age of 16 and upwards can be committed to these institutions to be trained and given a chance to reform.

I am in a position to know that during the past seven or eight years the Courts in Cyprus have repeatedly asked the legislature to establish such institutions, but without any result. I now take this opportunity of expressing the hope that the responsible authorities in our new Republic will consider establishing the borstal system in Cyprus at the earliest possible moment.

Coming to the merits of this appeal, although if I were the trial Judge I would feel inclined to impose a lesser sentence, nevertheless, having regard to the circumstances of this case and the principles applicable to appeals against sentence, I do not consider that the sentence is manifestly excessive. I would, therefore, dismiss the appeal.

O' BRIAIN, P.: In the result the appeal is dismissed and the sentence of six years' imprisonment is affirmed from the date of conviction.

Appeal dismissed.

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Josephides, J.