

KEITH MARLEY,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

(*Criminal Appeal No. 2725*)

*Criminal Law—Sentence—Appeal against sentence—Past offences confessed by accused after arrest—Undesirability of discouraging confessions by the imposition of heavy sentences in respect of confessed past offences—Sentences imposed for confessed past offences in this case should not have exceeded the severest punishment imposed for any of the offences for which accused was actually arrested.*

The appellant in the present case, was convicted on the 6th July, 1964, by the Assize Court of Nicosia, and a total sentence amounting to fifteen years imprisonment, was imposed on him, on the several counts in the information, as follows :

Seven years on count 1, for carrying two rifles and two bren guns on the 19th April, 1964 ;

five years on count 2, for carrying 4,400 rounds of ammunition on the 26th April, 1964, to run concurrently with the sentence on the previous count ;

eight years on count 3, for carrying 4 bren guns on the 10th May, 1964 ; to run consecutively to the sentence on count 1 ;

one year on count 4, for carrying 8 light machine gun axles and four light machine gun screws, on the 26th May, 1964, to run concurrently with the sentence on counts 3 and 5 ; and

five years on count 5, for possessing two mortars on the 26th May, 1964, to run concurrently with the sentence on count 3.

He now appeals against the total sentence imposed on him as above.

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The material facts of this case are that the accused was caught on the 26th May, 1964, being in unlawful possession of the articles the subject matter of counts 4 and 5 while transporting them in his car from Mansoura to Nicosia to be delivered to one Hilmi Hassan.

On the same night of his arrest, the appellant made a voluntary statement wherein he stated that he was transporting the articles in question for money ; and that he had done the same thing before on several previous occasions. He particularly referred in his statement to the unlawful carrying of the articles mentioned in counts 1 to 3.

*Held*, (1) the sentences imposed on the appellant by the trial Court in respect of each count separately, though heavy, are not, in the circumstances manifestly excessive. Nor was it inappropriate for the trial Court to impose consecutive sentences

(2) Though each individual sentence imposed in this case, is not manifestly excessive, in the light of the need not to discourage persons arrested from freely confessing past crimes, the sentences imposed in respect of appellant's past self-confessed crimes, to which counts 1 to 3 relate, though properly made consecutive with the sentences imposed for the offences for which he was actually arrested, should not have exceeded the severest punishment imposed in respect of any of the offences for which he was caught red-handed and arrested

(3) Therefore, the sentences in respect of counts 1 and 3 are reduced to five years, *ie* equal to the sentence on count 5. and the sentences on counts 1 to 3 are made concurrent to each other and consecutive to the sentence on count 5. The sentence on count 4 is left to be concurrent with the sentence on count 5. Thus, the total sentence of imprisonment to be served, will be 10 years.

*Appeal allowed. Sentence reduced accordingly.*

*Directions to trial Courts*

Trial Courts in assessing sentences should bear in mind the undesirability of discouraging people from confessing their own crime out of fear for the grave consequences following such confessions.

Cases referred to :

*Gordon Wheeler and others v. The Police* (reported in this vol. at p. 83 ante)

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**Appeal against sentence :**

The appellant was convicted on the 6th July, 1964, at the Assize Court of Nicosia (Cr. Case No. 1920/64) on 3 counts of the offence of carrying firearms contrary to section 3 (1) (2) (a) of the Firearms Law, Cap. 57, as amended by section 2 of Law 11 of 1959 (counts 1, 3 and 4) and on 2 counts of the offence of (1) Carrying explosive substances contrary to section 4 (1) (4) (d) of the Explosive Substances Law, Cap. 54 and (2) Possessing firearms contrary to sections 92, 20 and 21 of the Criminal Code, Cap. 154 and was sentenced by Stavrinides P.D.C., Ioannides and Demetriades, D.JJ. to 7 years imprisonment on count 1, 5 years imprisonment on count 2, concurrent with count 1, 8 years imprisonment on count 3, consecutive to counts 1 and 2, 1 year imprisonment on count 4 concurrent with counts 1-3 and 5 years imprisonment on count 5 concurrent with counts 1-5.

*M. M. Houry*, with *St. G. McBride*, for the appellant.

*A. Frangos*, Counsel of the Republic, for the respondent.

The facts of the case sufficiently appear in the judgment delivered by VASSILIADES, J.

ZEKIA, P. : The judgment of the Court shall be delivered by Mr. Justice Vassiliades.

VASSILIADES, J. : The Court gave to this very serious case all due consideration. And has reached a unanimous decision embodied in the judgment which I shall now proceed to read :

The appellant appeals only against sentence. The total sentence imposed on him by the Assize Court, amounting to fifteen years imprisonment on the several counts in the information, as follows :

Seven years on count 1, for carrying two rifles and two bren guns on the 19th April, 1964 ;

five years on count 2, for carrying 4,400 rounds of ammunition on the 26th April, 1964, to run concurrently with the sentence on the previous count ;

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eight years on count 3, for carrying 4 bren guns on the 10th May, 1964, to run consecutively to the sentence on count 1 ;

one year on count 4, for carrying 8 light machine gun axles and four light machine gun screws, on the 26th May, 1964, to run concurrently with the sentence on counts 3 and 5 ; and

five years on count 5, for possessing two mortars on the 26th May, 1964, to run concurrently with the sentence on count 3.

The material facts of this case are that the accused was caught on the 26th May, 1964, being in unlawful possession of the articles the subject matter of counts 4 and 5 while transporting them in his car from Mansoura to Nicosia to be delivered to one Hilmi Hassan.

On the same night of his arrest, the appellant made a voluntary statement wherein he stated that he was transporting the articles in question for money ; and that he had done the same thing before on several previous occasions. He particularly referred in his statement to the unlawful carrying of the articles mentioned in counts 1 to 3.

The offences committed by the appellant, especially at troubled times like the present, are, we think, very serious ; and therefore the sentence imposed on him by the trial Court in respect of each count separately, though heavy, are not, in the circumstances, manifestly excessive. Nor was it inappropriate for the trial Court to impose consecutive sentences.

On the other hand counts 1 to 3 relate to offences which the appellant himself, confessed after he was arrested. And had it not been for his confession, he might never have been rendered accountable for those offences.

The Court is of the opinion that trial Courts in assessing sentences should bear in mind the undesirability of discouraging people from confessing their own crime out of fear for the grave consequences following such confessions. Though, as we stated above, each individual sentence imposed in this case, is not manifestly excessive, we have reached the conclusion, in the light of the need not to discourage persons arrested from freely confessing past crimes, that the sentences imposed in respect of his past self-confessed crimes, to which counts 1 to 3 relate, though properly made consecutive with the sentences

imposed for the offences for which he was actually arrested, should not have exceeded the severest punishment imposed in respect of any of the offences for which he was caught red-handed and arrested. Therefore, we have decided to reduce the sentences in respect of counts 1, and 3 to five years, *i.e.* equal to the sentence on count 5 ; and to make the sentences on counts 1 to 3 concurrent to each other and consecutive to the sentence on count 5. We leave the sentence on count 4 to be concurrent with the sentence on count 5. Thus, the total sentence of imprisonment to be served, will be 10 years.

With respect to the contention raised by counsel for the appellant that the environment of a prison in Cyprus, which is not his own country, is strange to the appellant, and that he is deprived of the opportunity of receiving visits from his own family who are in the United Kingdom, we do not think that this is a ground for interfering with the sentence of the trial Court. This is a matter to be considered in each case by the appropriate authorities, at the proper time, as already observed in the judgment in *Gordon Wheeler and others v. The Republic* (reported in this vol. at p. 83 *ante*).

*Appeal allowed ; sentence reduced accordingly.*

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