1. GORDON CHARLES WHEELER,
2. MICHAEL ROY SMITH,
3. PHILIP ALFRED DREW,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos.* 2713–2715)

(*Consolidated*)

Criminal Law—Sentence—Appeal against sentence—Considerations in imposing sentence—Principles upon which the Supreme Court will interfere with sentence.

The appellants in the instant appeal were convicted on 2 counts of the offence of (1) Shop-breaking and theft, contrary to sections 29 (*a*), 255 and 20 of the Criminal Code Cap. 154 and (2) Malicious injury, contrary to sections 324 (1) and 20 of the Criminal Code, Cap. 154, and were sentenced as follows :

Appellant No. 1 : 2 1/2 years' imprisonment on count 1 and 1 year's imprisonment on count 2, the sentences to run concurrently, and payment of £273.250 mils compensation.

Appellant No. 2 : 18 months' imprisonment on count 1 and 1 year's imprisonment on count 2, the sentences to run concurrently, and payment of £37.500 mils compensation.

Appellant No. 3 : 1 year's imprisonment on each of counts 1 and 2, the sentences to run concurrently, and payment of £37.500 mils compensation.

All three appeals arise from the same case and have been by consent of all parties concerned consolidated ; they are against sentence, on the ground that the sentences imposed by the trial Court are manifestly excessive.

Held, (1) as far as the first appellant is concerned :

(*a*) We are unanimously of opinion that no material was put before us to justify interference with the sentence imposed. His appeal will therefore be dismissed and the sen-

tence affirmed, with the direction that it should run from the day of conviction and not from to-day as it would have been the case in the absence of such directions.

(*b*) The delay in hearing the appeal was not the fault of the appellant and should not affect his position. We do not think that in the circumstances we need deal with the sentence passed on the other charge which (*a*) was made to run concurrently, and (*b*) arises from the same set of facts, although they do create the several offences charged. Moreover we need not refer to the offences in the other charges taken into consideration at the request of the appellant under section 81 of the Criminal Procedure Law.

(*c*) As regards the order for compensation however, we think that considering the sentence passed and also the amount of the order, we are justified in amending the order for compensation as follows : The first appellant to pay the amount of compensation awarded (£273.250 mils) ; in default be kept in prison after the expiry of his sentence until the amount be paid, but in such case for a period not exceeding six months.

2. As regards the other two appellants :

(*a*) We all share the view that considering their character as reflected in the reports before us, and considering the secondary part they played in the commission of the offence, on the instigation and leadership of the first appellant, the sentences passed in their case are, we think, manifestly excessive.

(*b*) Taking into account the fact that they have immediately upon arrest admitted the offence ; that they have expressed sincere repentance ; and also their undertaking to-day to pay through their counsel the amount of compensation awarded, we think that in their case the sentence should be substituted by one of six months' imprisonment in each case on count 1, to run from the day of conviction. No sentence on other counts.

(*c*) We do not think that there is any need to interfere with the compensation orders made in the case of the second and third appellants except to say that the order made in each case shall be satisfied within three weeks, as undertaken by counsel.

Order in terms.

Cases referred to :

Charalambos Tryphonas, alias *Aloupos*, v. *The Republic*, 1961 C.L.R. 246 ;

Styllis Tofi and Costas Koutsellis v. *The Republic*, Criminal Appeal Nos. 2491–2492 decided on June 8, 1962 unreported.

Michalakis Spyrou Kakathymis v. *The Republic*, Criminal Appeal No. 2459, decided on March 14, 1962, unreported.

Attorney-General v. *Stavrou and Others*, 1962 C.L.R. 274.

Appeal.

The appellants were convicted on the 30th May, 1964, at the District Court of Limassol (Criminal Case No. 3149/64) on 2 counts of the offence of (1) shopbreaking and theft, contrary to sections 29 (*a*), 255 and 20 of the Criminal Code Cap. 154 and (2) Malicious injury contrary to sections 324 (1) and 20 of the Criminal Code, Cap. 154 and were sentenced by Limnatitis D.J. as follows : Appellant No. 1 : 2 1/2 years' imprisonment on count 1 and 1 year's imprisonment on count 2, the sentences to run concurrently, and payment of £273.250 mils compensation. Appellant No. 2 : 18 months' imprisonment on count 1 and 1 year's imprisonment on count 2, the sentences to run concurrently, and payment of £37.500 mils compensation. Appellant No. 3 : 1 year's imprisonment on each of counts 1 and 2, the sentences to run concurrently, and payment of £37.500 mils compensation.

St. G. McBride, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J. : The three appeals before us arise from the same case ; and by consent of all parties concerned have been consolidated. They are appeals against sentence, on the ground that the sentences imposed by the trial Court are, in the circumstances, manifestly excessive. The other grounds which have been advanced are in effect, subsidiary to this main ground.

The offences for which the appellants have been sentenced, are described in the judgment as serious ; and

we do not think that this can be denied. Moreover, there can be no doubt from what is on the record, that the trial Judge has carefully considered all circumstances affecting sentence. It is true that in his judgment, the learned Judge referred to one or two matters which strictly speaking need have no bearing on the sentence, such as that the appellants should have remembered at the time of committing the offence, that the police were then engaged on more important duties and so on. But we find it unnecessary to say more about it as we think that considerations of this kind have not influenced the Judge ; this is obvious when one considers what has been the heaviest sentence imposed in this case.

It has been submitted on behalf of the appellants that the responsibility for the commission of the offence is not the same for each appellant. The first, has certainly taken a leading part ; and, looking at the conduct of these young men on that night, in the light of the character-reports supplied by their Commanding Officer and by the Probation Officer which are before us by consent, there can be no doubt that the other two accused were drawn into this case by the first accused.

Though their guilt is the same—they are all jointly charged with the same offence, and they stand convicted accordingly—as far as sentence is concerned, the position is different ; starting, of course, from the punishment provided by law, the sentences must vary to fit each offender's case.

The considerations which should guide the Court in imposing sentence may be found in the judgments in *Haralambos Tryfonas* alias *Aloupos* v. *The Republic*, (1961) C.L.R. p. 246, and since then adopted and applied in a number of cases to which I need not refer. I shall only refer to *Styllis Tofi* and *Costas Koutsellis* v. *The Republic*, Criminal Appeal 2491–2492 ; and to *Michalakis Spyrou Kakathymis*, Criminal Appeal 2459, where a sentence of 3 years' imprisonment for shop-breaking on a young man of 18 years of age was affirmed on appeal. In another case of joint, planned stealing where three young men all first offenders, as far as I can remember, were sentenced by the trial Court to sentences of fines, for taking away articles to the value of £60, the sentences were increased in the Court of Appeal, to terms of two years' imprisonment. (*The Attorney-General* v. *Stavrou and others*, 1962 C. L. R. 274).

Taking into consideration that the main object of the sentence is to apply the law for the protection of the community ; without ignoring the factors connected with the individual accused, which is the view adopted in the appeals to which I have already referred, one can hardly say that the sentence passed in this case on the first appellant is manifestly excessive ; and as rightly submitted by Counsel for the Republic, the responsibility for passing sentence rests primarily with the trial Judge. The Court of Appeal will only interfere on the grounds set out in the cases referred to above.

As far as the first appellant is concerned, we are unanimously of opinion that no material was put before us to justify interference with the sentence imposed. His appeal will therefore be dismissed and the sentence affirmed, with the direction that it should run from the day of conviction and not from to-day as it would have been the case in the absence of such directions. The delay in hearing the appeal was not the fault of the appellant and should not affect his position. We do not think that in the circumstances we need deal with the sentence passed on the other charge which (*a*) was made to run concurrently, and (*b*) arises from the same set of facts, although they do create the several offences charged. Moreover, we need not refer to the offences in the other charges taken into consideration at the request of the appellant under section 81 of the Criminal Procedure Law.

As regards the order for compensation however, we think that considering the sentence passed and also the amount of the order, we are justified in amending the order for compensation as follows : The first appellant to pay the amount of compensation awarded (£273.250 mils) ; in default be kept in prison after the expiry of his sentence until the amount be paid, but in such case for a period not exceeding six months.

As regards the other two appellants, we all share the view that considering their character as reflected in the reports before us, and considering the secondary part they played in the commission of the offence, on the instigation and leadership of the first appellant, the sentences passed in their case are, we think, manifestly excessive. Taking into account the fact that they have immediately upon arrest admitted the offence ; that they have expressed sincere repentance ; and also their undertaking today to pay through their counsel the amount of compensation awarded, (Mr. McBride was good enough to under-

take to do so on their behalf within a period of three weeks) we think that in their case the sentence should be substituted by one of six months' imprisonment in each case on count 1, to run from the day of conviction. No sentence on other counts.

We do not think that there is any need to interfere with the compensation orders made in the case of the second and third appellants except to say that the order made in each case shall be satisfied within three weeks, as undertaken by counsel.

Perhaps there is one more word we could add in this case. We firmly trust that all three accused have by now realized that apart of the duty they owe to the community as a whole and to their family in particular, the responsibility which they have towards themselves, is to regulate their conduct in a way which will gain for them happiness and respect ; and not in the way which will lead them to trouble, to unhappiness and ultimately into prison. We hope that they are sensible enough to make now their decision, reaping a useful lesson from their misfortune. And to start practising their decision to live as honest and respectable men.

Having said that, we may perhaps add that though imprisonment served by any prisoner in the environment of the prison of any foreign country is, for many reasons, a heavier punishment than a similar term served in his own country, but this is something outside our province. We should not curtail the appropriate term of imprisonment on such account. It is a matter for the appropriate authorities to consider it at the proper time during the currency of such term of imprisonment.

Order in terms.