

1966
Oct. 13

[JOSEPHIDES, STAVRINIDES J.J., AND HADJIANASTASSIOU AG. J.]

PHIVOS
PANTELIS
ALIAS
PHIVOS TIS
MANOS
v.
THE POLICE

PHIVOS PANTELIS *alias* PHIVOS TIS MANOS,
Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 2837)

Criminal Law—Sentence—Explosive substances—Possessing explosive substances contrary to section 4 (4) (d) of the Explosive Substances Law, Cap. 54—Appeal against sentence as being excessive—Irrelevant and prejudicial material against the accused (appellant) introduced by the prosecution in the statement of facts before the trial Court—This might have influenced the mind of the trial judge in imposing sentence—Sentence reduced as manifestly excessive.

Trial in Criminal Cases—Irrelevant and prejudicial material against an accused person introduced by the prosecution in the statement of facts before the trial Court—See above.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 19th August, 1966 at the District Court of Limassol (Criminal Case No. 8142/66) on one count of the offence of possessing explosive substances, contrary to section 4 (4) (d) of the Explosive Substances Law, Cap. 54, and was sentenced by Loris, D.J., to nine months' imprisonment.

Appellant, in person.

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

The judgment of the Court was delivered by :

JOSEPHIDES, J.: The appellant in this case pleaded guilty to a charge of possessing explosive substances contrary to section 4 (4) (d) of the Explosive Substances Law, Cap. 54. The explosive substance in question was 57 drams of ordinary gunpowder which, it is understood, is used by sportsmen, a piece of safety fuse and a detonator.

The prosecuting officer, in stating the facts to the trial Judge, stated that the accused, who is a fisherman, had been called to the Limassol police station for interrogation in connection with "a case of indecent assault on male" and then he went on to state that when the appellant was searched the above articles were found in his possession.

Pausing there, we think that the fact that the appellant had been called to the police station in connection with a case of indecent assault on male was both irrelevant and highly prejudicial to the appellant in the present case, and this should not have been included in the statement of facts by the prosecuting officer.

The explanation given by the appellant in mitigation of sentence was that dolphins destroy his nets and that he had to carry gunpowder in order to cause small explosions in the sea to frighten the dolphins away.

The appellant who is 38 years of age had a similar previous conviction in 1954 for which he was bound over for one year. He also had four other convictions for gambling, disturbance etc. for which he was fined or bound over.

The learned trial Judge, in passing sentence, observed to the accused that he was of bad character and that one of his previous convictions was similar to the present offence, and he went on to pass a sentence of nine months imprisonment.

Considering that the appellant's similar previous conviction is some twelve years ago and that his last conviction for drunkenness was more than three years ago, we are of the view that the sentence of nine months imprisonment was manifestly excessive in the circumstances of this case. We also take into account that irrelevant and prejudicial material against the appellant was put by the prosecution before the trial Court which may have influenced the mind of the Judge in imposing sentence.

For all these reasons, we allow the appeal and reduce the sentence of nine months' imprisonment to one of three months' imprisonment. The sentence to run from the date of conviction.

Appeal allowed.