

1967
Jan. 31

[VASSILIADES, P., JOSEPHIDES, HADJIANASTASSIOU, JJ.]

AHMED OSMAN
v.
THE POLICE

AHMED OSMAN,

Appellant,

v.

THE POLICE

Respondents.

(*Criminal Appeal No. 2871*)

Criminal Law—Sentence—Explosive substances—Possessing explosive substances contrary to section 4 (1) (e), (4) (d) of the Explosive Substances Law, Cap. 54—A case of a single round of ammunition in unserviceable condition—No real substance in prosecution—A technical offence—A fine of £8 is, in the circumstances, a manifestly excessive sentence—Sentence set aside—Appellant-accused unconditionally discharged.

Criminal Procedure—Appeal—Sentence—Appeal against—Sentence manifestly excessive—See above.

Criminal Procedure—Appeal against conviction after a plea of guilty—Can only be proceeded with as provided in section 135 of the Criminal Procedure Law, Cap. 155.

Explosive Substances—Possession—See under “Criminal Law” above.

Appeal against sentence imposed on the appellant who was convicted on the 28th November, 1966, at the District Court of Nicosia (Criminal Case No. 26672/66) on one count of the offence of possessing explosive substances, contrary to section 4 (1) (e), (4) (d) of the Explosive Substances Law, Cap. 54, and was sentenced by Stylianides, D.J., to pay a fine of £8.

A. M. Berberoglou, for the appellant.

S. A. Georghiades, Counsel of the Republic, for the respondents.

The facts sufficiently appear in the judgment and ruling which follow :

VASSILIADES, P.: Having considered the matter, Mr. Berberoglou, we are of the opinion that we cannot now hear argument against the conviction, on the ground that the

article found on your client did not contain explosive substance. An appeal against conviction after a plea of guilty, can only be proceeded with as provided in section 135 of the Criminal Procedure Law, subject to any adaptation which may be necessary to bring the section in line with the Constitution.

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After a plea of guilty, an appeal against conviction will be heard on the ground that the facts alleged in the charge or information to which the appellant pleaded guilty, did not disclose an offence. Here the charge is that the accused did have in his possession explosive substance, one round of ammunition, size 0.32 without the licence of the Inspector of Explosives. These allegations of fact do constitute an offence ; and, therefore, after a plea of guilty to such charge, we cannot hear argument against the conviction. We shall hear you on the question of sentence.

Order in terms.

The following judgment was delivered by :

VASSILIADES, P.: On the facts of this case as they appear on record, we heard counsel of both sides on the question of sentence. Learned counsel for the appellant submitted that the sentence, in the circumstances, was manifestly excessive ; and learned counsel for the respondent submitted that the trial Judge, in the circumstances, rightly thought that the appellant knew that he was carrying a round of ammunition as he had concealed it in the lining of his coat.

We take the view that these assumptions would be out of place. There is nothing on record, and nothing in the judgment to indicate that the learned trial Judge had that in mind. What the Judge noted in the short reasons upon which he placed his decision, is that the possession of explosive substances now-a-days is a very serious offence ; and that as this was a case of only one round of ammunition, in un-serviceable condition, be considered that “£8 fine is adequate punishment”.

We take the view that the explosive substance contained in this un-serviceable, single round of ammunition of that size, cannot be considered as possession of explosives in circumstances which would make such possession a “very serious offence”. After a plea of guilty, one may think,

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it could rather be described as a technical offence. But apparently, the Judge allowed this general statement about the seriousness of possessing explosives now-a-days unduly affect his mind in dealing with this particular case.

The next thing is that dealing with the case of one round of ammunition, in unserviceable condition, we asked counsel for the prosecution to refer us to any case where such punishment has ever before, been imposed by any court. Learned counsel thought that there have been such cases ; but he was not able to help us more in this respect.

We unanimously take the view that there is no real substance in this prosecution ; and we find no justification for the sentence of £8 fine. We consider, in the circumstances, that the sentence imposed, is manifestly excessive ; and we allow the appeal, set aside the sentence, and discharge the appellant unconditionally.

Appeal allowed. Sentence set aside. Appellant discharged.