1967
May 5

GEORGHIOS IOANNOU EFTHYMIADES v. THE POLICE

[VASSILIADES, P., TRIANTAFYLLIDES AND LOIZOU, JJ.]

GEORGHIOS IOANNOU EFTHYMIADES,
Appellant,

v.

THE POLICE,
Respondents

(*Criminal Appeal No.* 2893)

Criminal Law—Conviction and sentence—Appeal against conviction and sentence as being "legally wrong" and "manifestly excessive", respectively—Stealing, contrary to sections 265 (1) *and* 20 *of the Criminal Code, Cap.* 154—*Trial Judge accepting the evidence for the prosecution, rightly came to the conclusion on which he convicted accused—Sentence not increased by Supreme Court under section* 145 (2) *of the Criminal Procedure Law, Cap.* 155, *after considerable hesitation*

Sentence—Appeal against—Not increased on appeal—See above

The appellant in this appeal was convicted for the offence of stealing 180 okes of carobs valued at £3 - contrary to sections 265 (1) and 20 of the Criminal Code Cap. 154 and was sentenced to a pay fine of £25. He appealed against conviction on the ground that it was legally wrong and against sentence on the ground that it was manifestly excessive.

Held, (I) with regard to conviction.

After hearing the appellant exhaustively, we find ourselves unable to disturb in any way the findings of the trial Judge, and the conviction based thereon. Accepting, as he did, the evidence for the prosecution, the learned trial Judge rightly came, in our opinion, to the conclusion on which he convicted the accused.

Held, (II) with regard to sentence.

(1) As regards the sentence, we find no merit in appellant's contention that it is, in the circumstances, manifestly excessive. And we have no difficulty in rejecting it. We take the view that stealing carobs from trees spread out widely in the country side, often far away from inhabited places, is an offence which the courts rightly, in our opinion, have often considered as a rather serious form of larceny, deserving appropriate

punishment ; punishment sufficient to act as deterrent, and to indicate the seriousness of the offence, considering the protection to which the owners of such property are entitled to expect from the law.

(2) Our difficulty in dealing with the question of sentence in this case, was whether we should consider it as manifestly inadequate, and proceed to increase it as provided in section 145 (2) of the Criminal Procedure Law, (Cap. 155) ; or, allow it to stand as imposed.

(3) After considerable hesitation, we reached the conclusion that we could allow it to stand, with a small variation so as to make it more clear ; particularly, regarding the order for costs.

(4) In the result the appeal fails ; and the conviction is affirmed, with a sentence of £25.— fine payble in two months ; or failing payment, three months' imprisonment in default. Moreover, appellant to pay £1.750 mils costs of prosecution, or one week's imprisonment in default.

Appeal dismissed. Conviction affirmed. Sentence and costs as aforesaid.

Appeal against conviction and sentence.

Appeal against conviction and sentence imposed on the appellant who was convicted on the 17th February, 1967, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 3418/66) on one count of the offence of stealing carobs contrary to sections 265 (1) and 20 of the Criminal Code, Cap. 154, and was sentenced by Pitsillides, D.J., to pay a fine of £25.

The appellant, in person.

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

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal from conviction and sentence taken upon a notice prepared by the appellant personally. Furthermore, the appellant has presented his appeal in person, in a way which does not help either his case, or the Court in dealing with the appeal.

The appellant is described in the charge, as a cinema-keeper, aged 56, of the village of Flassou. He was charged jointly with his wife, in the District Court of Nicosia, before a Judge sitting at Morphou, with stealing 180 okes of carobs valued at £3, the property of a villager living in a neighbouring village. Both appellant and his wife pleaded not guilty ; and the Judge heard four witnesses called by the prosecution, and the appellant who, in due course, elected to give evidence in his defence. The wife gave no evidence ; and called no witnesses.

At the conclusion of the trial, both accused were convicted as charged; the appellant was sentenced to a fine of £25 ; and his wife was bound over in the sum of £25 for one year to come up for judgment and sentence if called upon. Moreover, they were both ordered to pay jointly £3.500 mils costs of prosecution.

By his appeal, the husband challenges the conviction on the ground that it is " legally wrong "; and the sentence that it is " manifestly excessive ".

In presenting the appeal before us this morning, the appellant put forward contentions and allegations which did not help his case at all ; and most of them did not come from the record. We have tried to help him as much as we could ; and to deal with due care with such contentions as they did not appear to have been put before the trial Judge. On the other hand, the way in which the appellant presented his case explained, in a way, the difference in the sentence imposed on the appellant by the trial Judge from that imposed for the same offence, on his wife.

After hearing the appellant exhaustively, we find ourselves unable to disturb in any way the findings of the trial Judge ; and the conviction based thereon. Accepting, as he did, the evidence for the prosecution, the learned trial Judge rightly came, in our opinion, to the conclusions on which he convicted both accused.

As regards the sentence, we find no merit in appellant's contention that it is, in the circumstances, manifestly excessive. And we have no difficulty in rejecting it. We take the view that stealing carobs from trees spread out widely in the countryside, often far away from inhabited places, is an offence which the courts rightly, in our opinion, have often considered as a rather serious form of larceny, deserving appropriate punishment ; punishment sufficient to act as

deterrent, and to indicate the seriousness of the offence, considering the protection to which the owners of such property are entitled to expect from the law.

Our difficulty in dealing with the question of sentence in this case, was whether we should consider it as manifestly inadequate, and proceed to increase it as provided in section 145 (2) of the Criminal Procedure Law, (Cap. 155) ; or, allow it to stand as imposed.

After considerable hesitation, we reached the conclusion that we could allow it to stand, with a small variation so as to make it more clear ; particularly, regarding the order for costs.

In the result the appeal fails ; and the conviction is affirmed ; with a sentence of £25 fine, payable in two months ; or, failing payment, three months' imprisonment in default. Moreover, appellant to pay £1.750 mils costs of prosecution, or one week's imprisonment in default.

Appeal dismissed. Conviction affirmed. Sentence and costs as aforesaid.