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

GEORGHIOS CHARALAMBOUS VASILARAS AND ANOTHER,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals No.* 3057 *and* 3059).

Criminal Law—Shopbreaking—Section 294(9) *of the Criminal Code Cap.* 154—*Counselling or procuring the commission of the said offence—Section* 20(d) *of the Criminal Code.*

Criminal Procedure—Plea of guilty—Appeal—Appeal against conviction on a plea of guilty—Principles applicable.

Counselling or procuring commission of an offence—Section 20(d) *of the Criminal Code Cap.* 154.

Cases referred to :

Klonarou v. *The District Officer* (1963) 1 C.L.R. 47 ;

Athlitiki Efimeris "O Filathlos" and Another v. *The Police* (1967) 2 C.L.R. 249 at p. 253.

The facts sufficiently appear in the judgment of Vassiliades, P.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios Charalambous Vasilaras and Charalambos Christou Kyriakou who were convicted on the 12th November, 1968, at the Military Court, sitting at Nicosia, (Case No. 312/68) on one count of the offence of shopbreaking and stealing contrary to sections 294 (*a*), 20 and 21 of the Criminal Code, Cap. 154, and section 5 of the Military Criminal Code and Procedure Law, 1964 and were sentenced to eighteen and twelve months' imprisonment, respectively.

Appellant No. 1 appeared in person.

G. Tornaritis, for Appellant No. 2.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: These two appeals arise in the same case, a prosecution in the Military Court of Nicosia where the two appellants were convicted together with another young man on the 12th November, 1968, of shopbreaking and stealing goods of the value of over £700 ; and were sentenced to eighteen and twelve months imprisonment, respectively.

The three persons charged, all of about the age of 19, were doing their military service in the National Guard. They were jointly charged under section 294 (*a*) of the Criminal Code, Cap. 154, for shopbreaking ; and under sections 20 and 21 for complicity in the commission of the offence ; also under section 5 of the Military Criminal Code and Procedure Law, 1964–1967, the provisions of which bring the matter under the jurisdiction of the Military Court as a military offence.

When charged before the Court on November 12, 1968, the two appellants before us had already had over eighteen months' military service, having enlisted in January, 1967. They were charged with committing the offence on June 29, 1968, *i.e.* some four months before their trial. They apparently did not wish to be assisted at the trial ; and when charged, they, all three pleaded guilty.

The charge read to the appellants for the purposes of the plea, reads : (the President read the charge). After taking the pleas the President of the Military Court asked the prosecuting officer to open the facts which, according to the record were stated as follows : (the material part of the opening, as recorded by the Court-stenographer, was read).

During his opening, the prosecuting officer referred to the signed statements of the appellants made to the investigating officer of the unit about a week after the commission of the offence. The statement of the appellant now contesting his conviction, is not a long one and I propose reading it all (*exhibit* 3 on the record, read). The offence was in fact reported to the captain of the unit by another soldier on the same day on which the offence was committed ; and the goods were practically all recovered from where the appellants had stored them away with relatives and friends. None of the appellants ever denied that the offence described in the charge had in fact been committed ; nor did they deny being connected with it in some way or another.

After the opening of the facts by the prosecuting officer the President of the Military Court—an experienced retired judicial officer—expressly referring to the prosecution's statement asked the three accused one after another to state whatever they had to say in mitigation. One after another the accused young men offered apologies and prayed for the court's leniency. The appellant now contesting his conviction said :

«Διεπράξαμεν ἕνα μεγάλο σφάλμα, καὶ παρακαλῶ τὸ Σεβαστὸν Δικαστήριόν σας, ὅπως μᾶς κρίνῃ ἐπιεικῶς διὰ νὰ μπορέσωμεν εἰς τὴν ὑπόλοιπον ζωήν μας νὰ εἴμαστε καλύτεροι καὶ νὰ προοδεύσωμεν εἰς τὴν κοινωνίαν». This young man was a plumber before his enlistment ; and his schooling is given as two years at the secondary school, which presumably means eight years at school between the ages of 6 and 14.

The Military Court's judgment referred to the seriousness of the offence which is punishable with seven years' imprisonment ; and after a short reference to the facts, to the young age of the appellants and to their character, went on to say that the court proposed to impose a lenient sentence according to the part each accused played in the whole case. And concluded by imposing eighteen months' imprisonment on each of the two accused who actually committed the offence ; and twelve months on the third who shared in the spoils.

One of the convicts did not appeal either against his conviction or against the sentence imposed on him. The other appealed against sentence ; but this morning before us he abandoned his appeal ; and his sentence was affirmed by this court with directions to run from conviction, as it would be the case had the appellant given notice of abandonment to the Registrar before the hearing. The third appellant through his advocate challenges both conviction and sentence. He complains that " having regard to the evidence " he should not have been convicted ; and that the sentence imposed by the Military Court is manifestly excessive. By a supplementary notice filed on the last day before the hearing, appellant's advocate put his client's case on six grounds, the first and main of which is " that the facts alleged in the charge to which the appellant pleaded guilty did not disclose the offence for which the appellant was convicted ".

Elaborating extensively on his case, learned counsel submitted, that discussing the commission of the offence in

the morning of that day had nothing to do with the commission of the offence later in the same day as the parties to the morning discussion (including his client) had in the end desisted from committing the offence on the advice of their sergeant (who, nevertheless, was one of the perpetrators of the shopbreaking later in the day). His client, counsel stressed, was in fact away at the time when the offence was actually committed and took no part in the shopbreaking or the stealing. His taking some of the spoils later in the evening when his friends had shared them and there was a surplus, did not connect the appellant, counsel submitted, with the shopbreaking and the stealing charged. His client may have acted as a receiver, he argued ; but the appellant was not charged with that. Learned counsel could not refer us to any case in support of his proposition.

As I have repeatedly observed during the hearing of the argument, I find myself completely unable to accept such a proposition, especially in the face of appellant's conduct during the recovery of the stolen property ; of his written statement to the investigating officer about a week later ; of his plea to the charge which I have earlier read ; and his plea for leniency made to the trial Court.

In my judgment, learned counsel has set himself an impossible task. If there was any doubt about appellant's complicity in the commission of the offence, this is completely removed by the provisions in sections 20 and 21 of the Criminal Code obviously intended to establish beyond question the complicity of a person taking part in the planning of an offence committed in his absence as the appellant did in this case, and later sharing the spoils very soon after the crime. I can find no substance in this appeal ; and I would dismiss it without the slightest difficulty or hesitation.

JOSEPHIDES, J.: I concur. Upon the facts alleged in the charge and admitted before the trial Court, the appellant could have been convicted of the offence charged under sections 294 (*a*) and 20(*d*) of the Criminal Code, Cap. 154 : cf. *Klonarou* v. *The District Officer* (1963) 1 C.L.R. 47 ; and *Athlitiki Efimeris "O Filathlos" and Another* v. *The Police* (1967) 2 C.L.R. 249 at p. 253. I would dismiss the appeal.

STAVRINIDES, J.: It is true that the statement of facts by prosecuting counsel in the court below, read by itself,

lends support to the argument that there is no nexus between the applicant's agreement with one of his co-accused to commit the shopbreaking and the actual commission of that offence. However, that statement must be taken together with the reply made by the appellant when formally charged by the investigating officer (*exhibit* 3), to which prosecuting counsel referred in stating the facts to that court, and also together with the appellant's plea of guilty to the charge and his subsequent address in mitigation ; and so viewing all these matters I have no doubt that the appellant in fact counselled or procured the commission of the shopbreaking as well as received a share of the spoils.

I agree that the appeal should be dismissed.

VASSILIADES, P.: In the result this appeal is dismissed ; the conviction and sentence are affirmed ; the sentence to run from conviction.

Appeal dismissed ; conviction and sentence affirmed ; sentence to run from conviction.