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

COSTIS HJISAVVA TSIOLIS,

*Appellant,*

*v.*

THE POLICE,

*Respondents.*

(*Criminal Appeal No.* 3084).

*Criminal Law—Wilfully and unlawfully causing damage to property contrary to section* 324(2) *of the Criminal Code,* Cap. 154—*Immovable property jointly owned in undivided shares—Defence of* bona fide *claim of right under section* 8 *of the Criminal Code an afterthought.*

*Sentence—Appeal against sentence of three months' imprisonment for the above offence—No reason justifying interference by the Court of Appeal with the aforesaid sentence—Approach of the Court of Appeal to an appeal against sentence.*

*Appeal against sentence—Approach of the Court of Appeal to such an appeal—See, also, above.*

*Bail—Application for bail pending appeal—No merit.*

Cases referred to :

*Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286 ;

*Hapsides* v. *The Police* (reported in this Part at p. 64 *ante*).

The facts sufficiently appear in the judgment of the Court.

## Appeal against conviction and sentence.

Appeal against conviction and sentence by Costis HjiSavva Tsiolis who was convicted on the 19th February, 1969, at the District Court of Nicosia (Criminal Case No. 26226/68) on one count of the offence of malicious damage contrary to section 324(2) of the Criminal Code Cap. 154 and was sentenced by Vakis, D.J. to 3 months' imprisonment and he was further ordered to pay £3.850 mils costs.

*F. Kyriakides*, for the appellant.

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

*The judgment of the Court was delivered by :—*

VASSILIADES, P.: The appellant was convicted at the District Court of Nicosia on February 19, 1969, of wilfully and unlawfully causing damage to property, contrary to section 324(2) of the Criminal Code, Cap. 154, and was sentenced to three months' imprisonment. The property consisted of a small potato and beans plantation, the property of appellant's brother, at their village Platanistassa.

The appellant—a married man 35 years of age with a wife and seven minor children to support—went to a small piece of family land belonging to the appellant, his brother and their sister in undivided shares, and finding that the pool of irrigation water had been used by his brother he got angry and proceeded to destroy most of his brother's potato and bean plants, which appeared to have been freshly watered. The following evening, when the Police took a statement from appellant, he frankly admitted that he did so, in a fit of anger to stop his brother taking the water.

When charged before the District Court about six months later, on December 27, 1968, for wilful and malicious damage to property, the appellant pleaded " not guilty " ; and at the trial which took place in February last, he strenuously contested the charge through an advocate, contending that as his brother's potatoes were growing on land belonging to them jointly, the appellant had a proprietary interest in them which afforded him a good defence in this case.

The learned trial Judge, after describing the facts in detail, found that—

> " the complainant had been cultivating his portion (of the land) for years, in fact he had planted in the past some trees in it. In June 1968 he had some potato plants and bean plants growing in this portion. It is clear that the property (damaged) was ' growing cultivated vegetable produce ', within the meaning of section 324(2) and was admittedly planted and looked after by the complainant. The evidence further establishes beyond doubt, that the accused on visiting the land in question on June 18, 1968, did uproot the greatest part, if not the whole, of those plants, and that he consequently caused damage to them. The extent of damage was disputed but I think this question is of no importance in this case. The defence is that the accused acted within his rights. Learned counsel for the accused argued that his client acted under circumstances that the provisions of section 8 afford a defence to him."

Section 8 of the Criminal Code, Cap. 154, provides that a person is not criminally responsible in respect of an offence relating to property if he acted in the exercise of an honest claim of right and without intention to defraud. The learned trial Judge in this connection observes that according to appellant's own statement to the Police, as well as his reply to the formal charge, he caused the damage to his brother's potato plants because he got angry finding that his brother had used the water.

> " Having considered the arguments of defending counsel—the trial Judge proceeds—regarding the interpretation and application of section 8 of the Criminal Code, I fail to see how its provisions could help the accused. The defence of a claim of right is clearly an afterthought, attempted at to save the accused."

The acts of the accused, the trial Judge found, " were not intended to assert any right but clearly out of spite " to damage wilfully and malicioulsy his brother's potato plants. Upon that view of the facts and of the law applicable thereto, the trial Judge convicted the appellant and proceeded to consider sentence.

Taking all relevant factors into consideration, including appellant's previous conviction for aggravated assault and the seriousness of the offence which is punishable with seven years' imprisonment, and, apparently, taking also into account the whole attitude of the appellant, down to the end of the trial, the Judge was of the opinion that the only appropriate sentence would be one of imprisonment. Considering, however, the hardship of such a sentence on appellant's family, he imposed a term of three months.

Very soon after his conviction and sentence, appellant's advocate filed this appeal against both ; and also filed an application for bail pending the appeal. As the Registry found it possible to fix the hearing of the appeal at a very early date, the application for bail was not heard. We, therefore, do not propose saying more about that application than that, in the circumstances of this case, as they appear in the judgment of the trial Court and in the affidavit filed in support of the application, we find no merit whatsoever in that proceeding.

Returning to the appeal before us, we may say at once that having heard counsel for the appellant addressing the Court exhaustively on the technical aspect of the case,

particularly the proprietary interest of his client in the land in question, and the plants growing thereon, we found it unnecessary to call on counsel for the police regarding the conviction. We find ourselves in full agreement with the view of the matter taken by the learned trial Judge ; and we think that there is no legal or other merit whatsoever in the appeal against conviction.

As regards sentence, learned counsel for the prosecution supported the sentence mainly on the ground that damage to rural property of this nature, is a serious matter because, apart of the direct consequences of the offence, it might easily lead to quarrels and to crime with serious consequences.

The approach of this Court to an appeal against sentence has been stated time and time again. We may refer to one of the recent cases, *Karaviotis and Others* v. *The Police* (1967) 2 C.L.R.286, referred to the other day in *Hapsides* v. *The Police* (reported in this Part at p. 64 *ante*). We find it unnecessary to say anything more than that we see no reason whatever for interfering with the sentence imposed by the trial Judge.

Our difficulty regarding sentence was whether in dismissing the appeal we should let the law take its course, or make directions under section 147 (1) of the Criminal Procedure Law, Cap. 155, for the sentence to run from conviction. Not without considerable difficulty, we came to the conclusion that in all the circumstances, the consequences of this technical appeal should not fall on the appellant who has already received the appropriate sentence, perhaps, rather on the severe side. We, therefore, make directions for the sentence to run from the date of conviction.

*Appeal dismissed ; conviction and sentence affirmed.*