

1979 February 20

[HADJIANASTASSIOU, A. LOIZOU, AND MALACHTOS, JJ.]

SOCRATES MICHAEL,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 4003*).

Criminal Law—Sentence—Procuring defilement of a woman by false pretences and personation—Sections 159(b), 35 and 360 of the Criminal Code Cap. 154—One year's imprisonment—Dignity and self-respect of a woman—Sentence not manifestly excessive.

5 The appellant who was married and had 3 children represented to the complainant, a 28 years old unmarried girl, that he was not married and as a result she agreed to get engaged to him. The engagement was announced in a newspaper and in doing so the appellant gave to the newspaper a name other than the
10 one by which he was until then known; and when he was asked by the family of the complainant why he had used that name his reply was that that was his real name. In the night of the day of the announcement the appellant had sexual intercourse with the complainant and she was deflowered by him.

15 He was convicted on his own plea on two counts of the offences of procuring the defilement of a woman by false pretences and of personation and was sentenced to one year's imprisonment on the first count and this sentence was taken into consideration in respect of the second count.

20 On appeal against sentence:

25 *Held, (after stating the principles on which the Supreme Court may interfere with a sentence imposed by a trial Court—vide pp. 132–33 post) that the trial Court neither misdirected itself nor has it been influenced by any extraneous matter and approached the case with full responsibility and care having regard to these*

important problems regarding the dignity and self-respect of a young woman; that the sentence imposed on the appellant is not manifestly excessive in the circumstances of this case; and that, accordingly, the appeal must be dismissed.

Appeal dismissed. 5

Cases referred to:

Iroas v. Republic (1966) 2 C.L.R. 116.

Appeal against sentence.

Appeal against sentence by Socratis Michael who was convicted on the 31st January, 1979 at the District Court of Nicosia (Criminal Case No. 26156/78) on two counts of the offences of procuring the defilement of a girl by false pretences and of personation with intent to defraud, contrary to sections 159(b), 35 and 360 of the Criminal Code Cap. 154 and was sentenced by Artemides, D.J. to one year's imprisonment on the first count and such sentence was taken into account in respect of the second count. 10 15

Appellant appeared in person.

A.M. Angelides, Counsel of the Republic, for the Respondents. 20

HADJIANASTASSIOU J. gave the following judgment of the Court. On January 23, 1979, Socratis Michael, the appellant, pleaded guilty before the District Court of Nicosia on two counts: (1) procuring the defilement of Sofoula G. Tazetikou by false pretences, contrary to ss. 159(b) and 35 of the Criminal Code, Cap. 154; and (2) of personation with intent to defraud the said complainant by falsely representing himself to be some other person, to wit, Sotiris Constantinou of Fini village, contrary to s. 360 of the Criminal Code, Cap. 154. He was sentenced to one year's imprisonment on count 1, the sentence to be taken into account for the second count as well. 25 30

The facts are simple: The complainant is a displaced person and since 1974, was residing in Nicosia with both her mother and her brother. She is 28 years of age and unmarried. The accused, who comes from the village of Lemithou, was married on October 28, 1969 to Androulla Michael of Kaminaria Village. He is the father of three minor children, but for the last four years he was staying away from his wife, apparently because 35

his marriage had broken up. The accused settled in Nicosia, and was staying in a room which he rented from Maria Theofanous. He had never disclosed that he was married but on the contrary, according to the prosecution witnesses, he was telling
5 them that he was not married. In fact, when he was asked by prosecution witnesses Maria Theofanous and Sofia Constantinou as to whether he was thinking of getting engaged, his reply was in the affirmative.

On August 10, 1978, the accused, who was 28 years of age,
10 together with Maria Theofanous, visited the house of the complainant for the purpose of introducing him to the family of the complainant. During that meeting, the accused was introduced by witness 4 as Christakis. Finally, during that meeting, they agreed to get married, and the accused having assured the family that he was a batchelor, promised to secure for them a
15 batchelor's certificate.

On August 11, 1978, the accused together with his fiancée, her mother and brother, visited the offices of Philelephtheros newspaper and inserted a notice announcing their engagement.
20 The accused gave his name to one of the employees of the said paper as Sotiris Constantinou of Fini. The announcement of the engagement was published on August 13. When he was asked by the family of the complainant why he had used the name Sotiris, his reply was that that was his real name. Later
25 on, in the evening, on August 13, the accused had sexual intercourse with the complainant and she was deflowered by him.

On the following morning, the complainant and the accused went to Lemithou village in order to meet his family, but when they arrived there, the accused took his fiancée to a coffee house
30 of the village. The complainant, feeling surprised, enquired why they were not going to the house of his parents, and there and then, the accused told her that the reason was because he was already married and was afraid to go home to introduce her as his fiancée. The complainant, feeling very upset, on the following day broke her engagement and the fiancé was sent away.
35 The accused was arrested and he made an admission of the whole matter. In the meantime, the complainant was examined by a doctor, who certified that her hymen was recently ruptured.

Before the trial Court—the accused having pleaded guilty—

it was argued by counsel that the accused had an affection for his fiancée and said that he had every intention of marrying her when his marriage would be annulled. The trial Court, having considered everything which was before him, and particularly that the accused told the complainant the truth within such a short period, imposed the sentence of one year's imprisonment. 5

On appeal, the accused, who appeared in person, argued that the sentence imposed on him was manifestly excessive in the particular circumstances of his case, because, he said that he was in love with his fiancée and had every intention of marrying her as soon as he would have been in a position to do so. 10

There is no doubt that this is a case of deception in any language, and the accused rightly in our view, was sentenced to imprisonment. The question raised is whether the imposition of the sentence for one year was, having regard to the later behaviour of the accused, manifestly excessive. 15

It has been said in a great number of cases that on appeal against sentence, the Supreme Court has power to increase, reduce or modify the sentence: see s. 145(2) Cap. 155. A sentence, of course, may be increased or reduced where the Supreme Court agrees in principle with the mode of sentence chosen by the trial Court, but decides to increase or reduce it, whereas the power to modify the sentence confers jurisdiction on it to choose any other mode of punishment that the trial Court might have chosen. 25

Finally, we think we would like to make it quite clear—because of a great number of appeals against sentence, that the responsibility for the choice of sentence rests primarily with the trial Court. The circumstances under which the Supreme Court may interfere with a sentence imposed by the trial Court, were discussed in a number of cases. We, therefore, propose to quote a short passage from the judgment of *Afxenti "Iroas" v. The Republic*, (1966) 2 C.L.R. 116. Vassiliades, Ag. P. (as he then was) summed up the position in these terms at p. 118:— 30

“ This Court has had occasion to state more than once in earlier cases, that the responsibility of imposing the appropriate sentence in a case, lies with the trial Court. The Court of Appeal will only interfere with a sentence so 35

5 imposed, if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law; or, that the Court, in considering sentence, allowed itself to be influenced by a matter which should not affect the sentence; or, if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case.”

10 Having considered everything said by the trial Court, we have reached the conclusion that it neither misdirected itself nor has been influenced by any extraneous matter, and approached the case before it with full responsibility and care, having regard to these important problems regarding the dignity and self-respect of a young woman.

15 With this in mind, we think that the sentence imposed on the appellant is not manifestly excessive in the circumstances of this case.

Appeal dismissed.