1979 March 27, April 11

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

VASSOS CHR. PAVLIDES AND OTHERS,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos.* 3983–3990).

Criminal Law—Sentence—Using armed force against the Government of the Republic—Wrongfully keeping in confinement kidnapped persons—Unlawful possession, carrying and use of firearms—Unlawful possession of explosives—Attempting to escape from lawful custody and robbery—Concurrent sentences ranging from 20 months' to fifteen years' imprisonment—In assessing sentence trial Court has rightly taken a serious view of factors of use of armed force and terroristic tactics, such as the taking of hostages—Not advisable, in the light of nature of offences, to attribute any decisive weight either to clean past records of some of the appellants or to their personal circumstances or to their young age—Anyhow trial Court differentiated among appellants by, inter alia, *passing heavier sentences on prime movers—Cluster of offences to which appellants pleaded guilty and sentenced constituting an extremely serious breach of public order—Sentences not manifestly excessive or wrong in principle.*

Criminal Law—Sentence—Young offenders—Committing offences of extreme gravity—Interests of justice require that appropriate heavy sentences of imprisonment should be imposed on them notwithstanding their young ages.

Criminal Law—Sentence—Mitigating factors—Good past record of appellant—An Appeal Court may uphold a severe sentence in case of particular gravity without regard to the appellant's good record, especially when it wishes to place special emphasis on deterrence at the expense of mitigation—Same approach applies to any other personal mitigating factors.

Criminal Law—Sentence—Kidnapping and using of armed force against prison warders and police officers—Gravity of charge of kidnapping—There is greater emphasis on deterrence when victim of assault is a member of the security forces than in cases involving assaults on private persons.

Criminal Law—Sentence—Assessment—Matters to be taken into account—Primary task of assessing sentence lies with the trial Court.

Criminal Law—Sentence—Mitigating factors—Mental condition of appellant—Not a ground for leniency in view of gravity of offence.

Criminal Law—Sentence—Mitigating factors—Detention in prison—Though obviously unpleasant it cannot be regarded as a justification for attempting to escape from lawful custody—And it cannot be treated as a mitigating factor for the offences of taking hostages and using armed force against the Government—Nothing on record to substantiate appellants' allegations that offences were committed due to psychological state in which they found themselves in view of the strict security measures in force at the Central Prisons or due to fear for their lives.

Criminal Procedure—Appeal against sentence—Application for adjournment so as to file application for leave to adduce medical evidence concerning psychological state of appellants—Made too belatedly and without any justification for failing to do so before—Refused.

All the appellants pleaded guilty, before the Assize Court of Nicosia, to the offences of using armed force against the Government of the Republic, of wrongfully keeping in confinement kidnapped persons, of unlawful possession of firearms the importation of which is prohibited, of unlawful possession of explosives and of having attempted to escape from lawful custody. Also, appellant 1 pleaded guilty to the offence of robbery, appellants 1, 2, 3, 4, 7 and 8 pleaded guilty to the offence of unlawful carrying and use of firearms the importation of which is prohibited and appellant 1 pleaded guilty to the offences of unlawful carrying, use and possession of a pistol and a revolver.

In respect of the using armed force count appellants 1, 2 and 3 were sentenced to fifteen years' imprisonment, appellants 4, 5, 6 and 7 to eleven years' imprisonment and appellant 8 to eight years' imprisonment; in respect of the robbery count, appellant

1 to fifteen years' imprisonment; in respect of the wrongful keeping in confinement kidnapped persons count, appellants 1, 2, and 3 to eight years' imprisonment, appellants 4, 5, 6 and 7 to five years' imprisonment and appellant 8 to four years' imprisonment; in respect of the unlawful carrying and use of firearms count, appellants 1, 2 and 3 to fifteen years' imprisonment, appellants 4 and 7 to eleven years' imprisonment, and appellant 8 to eight years' imprisonment; in respect of the unlawful possession of firearms count, appellants 1, 2 and 3 to twelve years' imprisonment, appellants 4, 5, 6 and 7 to seven years' imprisonment and appellant 8 to five years' imprisonment; in respect of the unlawful carrying, use and possession of a pistol and a revolver counts, appellant 1 to ten years' imprisonment on each count; in respect of the unlawful possession of explosives count, appellants 1, 2 and 3 to six years' imprisonment, appellants 4, 5, 6 and 7 to four years' imprisonment and appellant 8 to three years' imprisonment; and, in respect of the attempting to escape from lawful custody count, all appellants to twenty months' imprisonment. All the sentences were made concurrent and commencing on September 19, 1978, and it was, also, ordered that they should be concurrent with any other sentence being served by any of the appellants at the time.

In relation to appellants 2 and 4 there were taken into consideration in passing sentence, under section 81 of the Criminal Procedure Law, Cap. 155, outstanding offences of conspiracy to commit violence, which they admitted.

At the time of commission of the above offences appellants 1, 2, 3, 4, 5 and 6 were in custody at the Central Prisons, as accused persons, committed for trial for other offences; appellant 7 was a prisoner serving a sentence of life imprisonment for premeditated murder and appellant 8 was, also, a prisoner serving a sentence of four years' imprisonment for unlawfully possessing firearms and explosive substances.

The offences in question were committed when appellants 1, 2 and 3 attempted to escape from lawful custody and in the course of doing so they immobilized a number of prison warders and policemen and shot at and wounded another policeman. When their attempt to escape failed, the three appellants took the prison warders and policemen, who were present there, as captives, seized from them six automatic weapons and ammunition and proceeded with them to a corridor which leads to Block 6

of the prisons. At that stage appellant 4, who was detained in another block managed to get away and joined appellants 1, 2 and 3, taking possession of a firearm too. Also, appellants 5, 6, 7 and 8 jumped over the railings of the respective blocks where they were being detained and joined the other appellants; they all together led the policemen and the prison warders, whom they had taken as hostages to Block 6, where they took as another hostage a prison warder, who was on duty there. The appellants remained in the said Block 6 together with their hostages, from September 16 until September 19, 1978, when after appropriate arrangements had been made, they surrendered their weapons, released the hostages and surrendered themselves to the authorities. During the time which they spent in Block 6 the appellants were doing guard duty, armed with firearms and taking cover behind their hostages, whom they used as shields. They repeatedly threatened that they would kill the hostages if the security forces would launch an attack for the purpose of arresting the appellants and freeing the hostages. They, also, threatened the hostages that they would kill them if the Government did not grant them an amnesty and free exit from Cyprus. Appellant 1 was, during all the time, acting as the leader of the other appellants, assisted actively by appellants 2 and 3, so that in effect these three appellants played leading roles as prime movers.

Appelants 1, 3 and 4 had no previous convictions, appellant 2 had only one previous conviction for an offence of minor significance, appellant 5 had six previous convictions for various offences mostly involving violence, appellant 6 had two previous convictions, one for membership of an unlawful association and one for an offence involving violence, appellant 7 had a number of previous convictions in addition to his conviction for murder, one of them being for possessing a firearm the importation of which is prohibited and for possessing explosive substances, and appellant 8, in addition to the offences for which he was in prison for four years, had a previous conviction for an offence of minor significance.

Upon appeal against sentence Counsel for the appellants contended that the above sentences were manifestly excessive and wrong in principle.

At the conclusion of his address counsel for appellants 1, 2 and 5 has applied for an adjournment so as to be given the opportunity to file an application for leave to adduce medical evi-

dence concerning the psychological state of the appellants at the time of the commission of the above offences. He was notified on January 29, 1979 that the hearing of these appeals had been fixed on March 27 and when he filed detailed grounds of appeal on March 26, supplementing the initial formal notices 5 of appeal, he did not apply for leave to adduce medical evidence.

Held, (I) on the application for adjournment:

That the application for adjournment has been made too belatedly and without any justification for failing to do so before and, consequently, it has to be refused; and that, moreover, the 10 contention that the psychological state of the said appellants, at the material time, was a mitigating factor, was put forward before the trial Court and at that time their Counsel did not seek leave to adduce medical evidence in relation to their psychological state. 15

Held, (II) on the merits of the appeals:

(1) That the trial Court has rightly taken a serious view of the factors of the use of armed force and terroristic tactics, such as the taking of hostages, in assessing the sentences which were passed upon the appellants; and that, also, in the light of the 20 nature of the offences of which they were convicted, on their own pleas of guilty, it was not advisable to attribute any decisive weight either to the clean past records of those appellants who had no previous convictions or to their personal circumstances.

(2) *On the question whether greater weight ought to have been* 25 *attributed to the young age of some of the appellants*: That it cannot be accepted that this should have been so in the present instance, because when offences of extreme gravity are committed by young persons the interests of justice require that appropriate heavy sentences of imprisonment should be imposed 30 on them notwithstanding their young age (see, *inter alia*, *R.* v. *Roberts* [1966] Crim. L.R. 563 and *Menelaou and Others* v. *Republic* (1971) 2 C.L.R. 146).

(3) That, as regards the weight to be attributed to the good past record of some of the appellants, though generally sub- 35 stantial allowance, by way of mitigation, may be made on this ground, an Appeal Court may upheld a severe sentence in case of particular gravity without regard to the appellant's good record, especially when it wishes to place special emphasis on deterrence at the expense of mitigation (see, *inter alia*, Thomas 40

on Principles of Sentencing, p. 174): that the same approach applies in cases of such gravity as the present one, to any other personal mitigating factors; that, anyhow, the trial Court differentiated among the appellants, by passing heavier sentences on appellants 1, 2 and 3, who were the prime movers and lighter sentences on appellants 4, 5, 6, 7 and 8 who played, to a certain extent, a secondary role; and that, moreover, in relation to appellant 8 the trial Court was more lenient in view of the fact that it had before it evidence regarding his mental condition.

(4) *On the question whether appellant* 8 *ought to have been treated even more leniently in view of his condition*: That in view of the gravity of the offences to which he has pleaded guilty such a course would not have been a proper one; and that, moreover, it might not be lost sight of that he is burdened with previous convictions for unlawfully possessing a firearm the importation of which is prohibited and for unlawfully possessing explosive substances.

(5) *On the question whether the trial Court wrongly failed to deal with appellants' submission that they committed the said offences due to the tense psychological state in which they had found themselves in view of the strict security measures which were in force at the Central Prisons; and, also, because some of them were afraid, due to alleged threats made against them by members of the security forces, that they might be killed while they were detained in prison*:

(a) That on a plea of guilty a trial Court passes sentence on the basis of the facts expounded by counsel for the prosecution, taking into account any mitigating considerations arising from such facts, or from facts which are placed before it by defending counsel and which are either undisputed or, if disputed, they appear to have been established to its satisfaction by necessary inferences drawn from other indisputable facts or by credible evidence adduced, in a proper case, by the defence, with the special leave of the trial Court.

(b) That in the present case there does not exist anything at all on record, other than mere unsubstantiated allegations of counsel for the appellants, which could be treated as establishing directly, or even indirectly, the version of the appellants that all, or any, of them were really afraid that they would be killed while being detained in the Central Prisons, or that they had any valid reason to entertain fears in this connection.

(c) That there is nothing on record which could lead to the conclusion that the conditions of detention in the Central Prisons had, due to the security measures in force, become of such a nature as to create in the appellants a psychological state which led them to attempt to escape and to commit as acts of sheer 5 desperation the offences to which they have pleaded guilty.

(d) That, of course, being detained in a prison, with all the security measures that such detention necessarity entails, is something which is obviously unpleasant and that is why deprivation of liberty is a mode of punishment; that deprivation of liberty 10 cannot be regarded as a justification for attempting to escape from lawful custody and it is, definitely, utterly unacceptable to treat it as a mitigating factor for the offences of taking hostages and using armed force against the Government in an effort to extort promises for amnesty and free exit from the country; and 15 that, therefore, there is nothing wrong in the fact that the trial Court has not chosen to deal in particular, at any length, with the above aspects of this case.

(6) That in the present case this Court is faced with a flagrant instance of use of armed force against the Government of the 20 Republic in an attempt to escape from the Central Prisons, in the course of which there were used firearms and there were kidnapped members of the security forces, namely prison warders and policemen, and were used as hostages (see, *inter alia*, Smith and Hogan on Criminal Law, 4th ed. p. 385 and Glanville Wil- 25 liams on Criminal Law (1978) p. 180 regarding the seriousness of charges of kidnapping); that another most grave aspect of this case is that there have been deliberately used potentially lethal weapons against prison warders and police officers (see Thomas on Principles of Sentencing p. 102 where it is stated that there is 30 perhaps a greater emphasis on deterrence when the victim of an assault is a police officer than in cases involving assaults on private persons); that the cluster of offences to which the appellants have pleaded guilty, and for which they have been sentenced, are regarded by this Court as constituting an extremely serious 35 breach of public order and, in the light of all that has been stated in this judgment, it does not feel persuaded, in the least, that it should intervene in this case in favour of any one of the appellants, for any of the reasons put forward by his counsel, in order to reduce any of the sentences passed upon him; that it has reach- 40 ed the conclusion that, sitting as an Appellate Court, it has not

been satisfied by the appellants—on whom the onus to so satisfy it lay—that the sentences passed upon them by the trial Court, which had the primary task of assessing such sentences, are manifestly excessive or wrong in principle; and that, accordingly, the appeals must be dismissed.

Appeals dismissed.

Cases referred to:

R. v. *Roberts* [1966] Crim. L.R. 563;

R. v. *MacDonald*, 51 Cr. App. R. 359 at pp. 360–361;

Christofi v. *Police* (1971) 2 C.L.R. 216;

Menelaou and Others v. *Republic* (1971) 2 C.L.R. 146:

R. v. *Reid* [1972] 2 All E.R. 1350;

R. v. *Beagle* [1975] Crim. L.R. 727;

R. v. *Probyn* (cited in Thomas Principles of Sentencing p. 93);

R. v. *Cooper, Davis and Gentry* (cited in Thomas Principles of Sentencing p. 103).

Appeal against sentence.

Appeal against sentence by Vassos Chr. Pavlides and others who were convicted on the 5th December, 1978, at the Assize Court of Nicosia (Criminal Case No. 24854/78) of using armed force against the Government of the Republic, contrary to section 41 of the Criminal Code, Cap. 154, of wrongfully keeping in confinement kidnapped persons, contrary to section 252 of Cap. 154, of unlawful possession of firearms the importation of which is prohibited, contrary to section 3 of the Firearms Law, 1974 (Law 38/74), of unlawful possession of explosives, contrary to section 4 of the Explosive Substances Law, Cap. 54, of attempting to escape from lawful custody, contrary to section 128 of Cap. 154, of unlawful carrying and use of firearms the importation of which is prohibited, contrary to section 3 of Law 38/74 (appellants 1, 2, 3, 4, 7 and 8 only), of robbery, contrary to section 282 of Cap. 154 (appellant 1 only) and of unlawful carrying, use and possession of a pistol and a revolver, contrary to section 4 of Law 38/74 (appellant 1 only) and were sentenced by Stavrinakis, P.D.C., Papadopoulos, S.D.J. and Nikitas, D.J., to concurrent terms of imprisonment ranging from 20 months to 15 years, commencing on the 19th September, 1978 and it was further ordered that the sentences should be

concurrent with any other sentence being served by any of the appellants at the time.

A. Eftychiou, for appellants 1, 2 and 5.

E. Vrahimi (Mrs.), for appellants 4 and 8.

P. Solomonides, for appellants 3, 6 and 7.

M. Kyprianou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

March 27, 1979. TRIANTAFYLLIDES P. gave the following ruling of the Court. Counsel for appellants 1, 2 and 5 has, at the conclusion of his address today, applied for an adjournment so as to be given the opportunity to file an application for leave to adduce medical evidence concerning the psychological state of the appellants at the time of the commission of the offences in respect of which they were sentenced after they have pleaded guilty.

Counsel for the appellants concerned was notified as early as January 29, 1979, that the hearing of these appeals had been fixed for today; and yet when only yesterday, March 26, 1979, he filed detailed grounds of appeal, supplementing the initial formal notices of appeal, he did not apply for leave to adduce medical evidence as aforesaid.

We consider that counsel for appellants 1, 2 and 5 has made his present application for adjournment too belatedly and without any justification for failing to do so before, and, consequently, we have to refuse it.

Moreover, his contention that the psychological state of the said appellants, at the material time, was a mitigating factor, was put forward before the trial Court; and, at that time, their counsel did not seek leave to adduce medical evidence in relation to their psychological state.

Application refused.

April 11, 1979. TRIANTAFYLLIDES P. read the following judgment of the Court. All the appellants were accused persons in Criminal Case No. DCN24854/78, which came up for trial before an Assize Court in Nicosia on November 20, 1978.

In the information, on the basis of which they were committed for trial, they were numbered as accused in the same way as they are numbered as appellants in the present proceedings

before us; there was, moreover, a co-accused of theirs, accused 9, Androulla Neocleous, who has not appealed.

The information contained fourteen counts, and on November 27, 1978, all the appellants pleaded guilty to count 2 (charging 5 them with the use of armed force against the Government of the Republic, contrary to section 41 of the Criminal Code, Cap. 154), to count 7 (charging them with wrongfully keeping in confinement kidnapped persons, contrary to section 252 of Cap. 154), to count 9 (charging them with unlawful possession 10 of firearms the importation of which is prohibited, contrary to section 3 of the Firearms Law, 1974, Law 38/74), to count 12 (charging them with unlawful possession of explosives, contrary to section 4 of the Explosive Substances Law, Cap. 54) and to count 13 (charging them with having attempted to escape from 15 lawful custody, contrary to section 128 of Cap. 154). Also, appellant 1 pleaded guilty to count 5 (charging him with robbery, contrary to section 282 of Cap. 154) appellants 1, 2, 3, 4, 7 and 8 pleaded guilty to count 8 (charging them with the unlawful carrying and use of firearms the importation of which is prohi- 20 bited, contrary to section 3 of Law 38/74) and appellant 1 pleaded guilty to counts 10 and 11 (charging him with the unlawful carrying, use and possession of, respectively, a pistol and a revolver, contrary to section 4 of Law 38/74).

Accused 9, at the trial, pleaded guilty only to count 13.

25 In relation to appellants 2 and 4 there were taken into consideration by the trial Court in passing sentence, under section 81 of the Criminal Procedure Law, Cap. 155, on their own application and with the consent of the prosecution, outstanding offences of conspiracy to commit violence, which they admitted 30 and in respect of which they had been committed for trial by another Assize Court.

As a result of the aforementioned pleas of guilty of the appellants the prosecution did not offer any evidence in relation to the other counts in the information.

35 The trial Court sentenced, in respect of count 2, appellants 1, 2 and 3 to fifteen years' imprisonment, appellants 4, 5, 6 and 7 to eleven years' imprisonment and appellant 8 to eight years' imprisonment; in respect of count 5, appellant 1 to fifteen years' imprisonment; in respect of count 7, appellants 1, 2 and 3 to 40 eight years' imprisonment, appellants 4, 5, 6 and 7 to five years' imprisonment and appellant 8 to four years' imprisonment; in

respect of count 8, appellants 1, 2 and 3 to fifteen years' imprisonment, appellants 4 and 7 to eleven years' imprisonment, and appellant 8 to eight years' imprisonment; in respect of count 9, appellants 1, 2 and 3 to twelve years' imprisonment, appellants 4, 5, 6 and 7 to seven years' imprisonment and appellant 8 to five years' imprisonment; in respect of counts 10 and 11, appellant 1 to ten years' imprisonment on each count; in respect of count 12 appellants 1, 2 and 3 to six years' imprisonment, appellants 4, 5, 6 and 7 to four years' imprisonment and appellant 8 to three years' imprisonment; and, in respect of count 13 all appellants and accused 9 to twenty months' imprisonment. All the sentences were made concurrent and commencing on September 19, 1978, and it was, also, ordered that they should be concurrent with any other sentence being served by any of the appellants at the time.

At the material time appellants 1, 2, 3, 4, 5 and 6 were in custody at the Central Prisons, as accused persons, committed for trial for other offences, whereas appellant 7 was a prisoner, having been convicted on January 11, 1975, of the offence of premeditated murder and serving a sentence of life imprisonment to which the death sentence, initially passed on him, had been commuted, appellant 8 was, also, a prisoner, having been convicted on October 17, 1977, of the offences of unlawfully possessing a firearm the importation of which is prohibited, and of unlawfully possessing explosive substances, and was serving a sentence of four years' imprisonment.

Appellants 1, 3, 4 and accused 9 had no previous convictions, appellant 2 had only one previous conviction for an offence of minor significance, appellant 5 had six previous convictions for various offences mostly involving violence, appellant 6 had two previous convictions, one for membership of an unlawful association and one for an offence involving violence, appellant 7 had a number of previous convictions in addition to his conviction for murder, one of them being for possessing a firearm the importation of which is prohibited and for possessing explosive substances, and appellant 8, in addition to the offences for which he was in prison for four years, had a previous conviction for an offence of minor significance.

Appellant 1 was engaged to be married to accused 9, who was the sister of appellant 3, and, also, appellant 2 was married to the sister of appellant 1.

The salient facts of this case appear to be, briefly, as follows:-

On September 16, 1978, at about 2. 30 p.m., appellants 1, 2 and 3 were in the visitors' room of the Central Prisons; they had accused 9, who was not in custody, as their common visitor, and they were guarded by two prison warders.

A few minutes after the visit had commenced, appellants 1 and 2 were found to be armed with a pistol and a revolver, respectively, and they demanded from one of the prison warders the keys of the main door of the Prisons, in order to escape. When he said that he did not possess the keys, appellant 1 asked him to call the officer in charge of the guard, who came on being summoned; he was led by appellant 1 to the entrance of the guard-room where there was a prison warder who had the keys of the main door of the prisons.

Appellant 1 seized this warder by the throat and, threatening him with a pistol, asked him to surrender to him the keys, but at that moment the officer in charge of the guard intervened and came into grips with appellant 1 in an effort to disarm him and to free the warder.

At that stage appellant 3 struck the officer in charge of the guard in the face with his fist.

In the meantime, the warder who had the keys managed to get away and he ran to a nearby office where he sounded the alarm.

While these events were taking place, appellant 2, using a revolver, immobilized a number of policemen who were there as extra guards; in the course of doing so he came into grips with one of them, and, at that time, there were heard five or six shots and the policeman concerned was wounded and taken to the General Hospital for medical treatment, where it was found that he had suffered injuries caused by bullets.

As a result of the aforedescribed actions of the three appellants the prison warders and policemen who were present there were taken captives, the appellants seized from them six automatic weapons, and ammunition, and then, with three policemen and four prison warders, they proceeded to a corridor which leads to Block 6 of the Prisons.

At that stage, appellant 4 who was detained in Block 3 managed to get away and joined appellants 1, 2 and 3, taking posses-

sion of a firearm, too. Also, appellants 5, 6, 7 and 8 jumped over the railings of the respective blocks where they were being detained and joined the other appellants; and they all together led the policemen and the prison warders, whom they had taken hostages as aforesaid, to Block 6, where they took as another hostage a prison warder, who was on duty there. 5

Initially, the eight hostages were locked up in a cell in Block 6, but later the appellants led them out into the yard of Block 6, where they tied them up, told them to sit in on the ground and threatened them that they would kill them if the Government did not grant to the appellants an amnesty and free exit from Cyprus. 10

At some stage appellants 1 and 5, taking with them one of the hostages, approached a watch-tower overlooking Block 6 and called on the prison warder, who was on duty there, to surrender his arms, threatening that they would throw a hand grenade at him; he complied with their demand and threw down into Block 6 two automatic weapons. 15

From September 16 until September 19, 1978, the appellants remained in Block 6 together with their hostages, with the exception of one of them, whom they released on September 16, soon after they had got into Block 6, because he became ill. 20

During the time which they spent in Block 6 the appellants were doing guard duty, armed with firearms and taking cover behind their hostages, whom they used as shields. 25

They repeatedly threatened that they would kill the hostages if the security forces would launch an attack for the purpose of arresting the appellants and freeing the hostages.

Also, during this period the appellants fired on certain occasions against members of the security forces, who were posted around Block 6. 30

On September 19, 1978, after appropriate arrangements had been made, the appellants surrendered their weapons, released the hostages and surrendered themselves to the authorities.

During all this time appellant 1 acted as the leader of the other appellants, assisted actively by appellants 2 and 3, so that in effect these three appellants played leading roles as prime movers. 35

In passing the aforementioned sentences upon the appellants the trial Court took duly into account, as it appears from its judgment, all relevant considerations, including all the main submissions made in mitigation by counsel appearing for them as well as their personal circumstances, in connection with which there were produced before the trial Court social investigation reports concerning appellants 1, 2, 3, 4 and 8. Actually, social investigation reports had been prepared in relation to other appellants too, but their counsel informed the trial Court that they did not require their production.

Counsel for the appellants have argued before us that the sentences imposed on the appellants are manifestly excessive and wrong in principle.

We are of the view that the trial Court has rightly taken a serious view of the factors of the use of armed force and terroristic tacticts, such as the taking of hostages, in assessing the sentences which were passed upon the appellants; also, that in the light of the nature of the offences of which they were convicted, on their own pleas of guilty, it was not advisable to attribute any decisive weight either to the clean past records of those appellants who had no previous convictions or to their personal circumstances; of course, both these considerations were before the trial Court and, in our view, it has duly taken them into account to the required extent in individualizing the sentences passed upon each appellant.

We have been urged to hold that greater weight ought to have been attributed to the young ages of some of the appellants. We cannot accept that this should have been so in the present instance, because when offences of extreme gravity are committed by young persons the interests of justice require that appropriate heavy sentences of imprisonment should be imposed on them notwithstanding their young ages.

In *R.* v. *Roberts*, [1966] Crim. L.R. 563, a young man aged nineteen years pleaded guilty to wounding a police officer with intent to avoid arrest and to cause grievous bodily harm, and to carrying an offensive weapon. It was held by the Court of Criminal Appeal, in England, that it was a grave case and despite his age there was no ground for altering the sentence of ten years' imprisonment which had been imposed on him.

In *R.* v. *MacDonald*, 51 Cr. App. R. 359, a sentence of ten

years' imprisonment passed upon the appellant for rape was upheld by the Court of Appeal (Criminal Division) in spite of the fact that the appellant was only eigteen years old and even though two other co-accused of his, who were aged twenty and thirty-two years, respectively, received only sentences of seven years each; Lord Parker C.J. said the following (at pp. 360-361):-

> " Malcolm MacDonald was granted leave to appeal against sentence by the single Judge. Mr. Heron on his behalf has urged what is undoubtedly true, that this young man is only eighteen, and his brother Hector was twenty and that Wright, the half brother, was thirty-two with, as I have said, already a conviction for assault with intent to ravish. He urges that there is no reason why he, Malcolm, should be treated any differently from the others. The Court, however, observes that the trial Judge deliberately chose to make a distinction and in sentencing said: 'With regard to Malcolm MacDonald I take the view that, young as you are, you were the prime mover in this case. It was you who seized the girl who was raped and dragged her into the car. It was you who made her submit to sexual intercourse in circumstances of brutality which she has described'. The Court sees no reason to differ from the trial Judge and accordingly the appeal of Malcolm MacDonald is dismissed."

In *Christofi* v. *The Police*, (1971) 2 C.L.R. 216, our Supreme Court upheld a sentence of three years' imprisonment which was passed upon a young man aged twenty-two years, after he had pleaded guilty to the charge of breaking and entering the office of a petrol filling station, at night time, and stealing from there the amount of £ 7.

Also, in *Menelaou and others* v. *The Republic*, (1971) 2 C.L.R. 146, sentences of seven and five years' imprisonment which were imposed, respectively, for attempted armed robbery on appellants who, at the time, were aged only about seventeen years each, were upheld on appeal.

As regards the weight to be attributed, in the present instance, to the good past record of some of the appellants, we would observe that though generally substantial allowance, by way of mitigation, may be made on this ground, an appeal Court may uphold a severe sentence in case of particular gravity without

regard to the appellant's good record, especially when it wishes to place special emphasis on deterrence at the expense of mitigation (see, *inter alia*, in this respect, Thomas on Principles of Sentencing, p. 174); and the same approach applies, in our view, 5 in cases of such gravity as the present one, to any other personal mitigating factors.

Anyhow, as already stated, the trial Court differentiated among the appellants, by passing heavier sentences on appellants 1, 2 and 3, who were the prime movers in the commission 10 of the cluster of interrelated offences to which they pleaded guilty, and lighter sentences on appellants 4, 5, 6, 7 and 8, who played, to a certain extent, a secondary role; moreover, in relation to appellant 8 the trial Court was more lenient in view of the fact that it had before it medical evidence that, though "he is 15 definitely not suffering from any mental disorder, ... he is an immature person with certain hysterical patterns of behaviour which he is exhibiting for the sake of avoiding an adverse situation or for the purpose of gaining some kind of positive reinforcement or reward; and these modes of behaviour are 20 mixed with different conscious malingering in order to reinforce and achieve his objects earlier or more effectively."

It has been argued during the hearing of his appeal that he ought to have been treated even more leniently by the trial Court. In view of the gravity of the offences to which he has 25 pleaded guilty we do not agree that such a course would have been a proper one; and, moreover, it must not be lost sight of that he is burdened with previous convictions for unlawfully possessing a firearm the importation of which is prohibited and for unlawfully possessing explosive substances.

30 As regards appellants 1, 2 and 3 it was quite rightly found by the trial Court that there did exist on the part of, at least, appellants 1 and 2 a preconceived plan to escape; and this is substantiated by the fact that they managed to secure unlawfully a pistol and a revolver in order to try to implement their said plan. 35 Also, appellant 3 joined, in an active manner, in the attempted escape from the very beginning.

It has been conceded, quite fairly, by counsel for the respondent, that there was not initially a plan to escape on the part of appellants 4, 5, 6, 7 and 8, and that they participated in the at- 40 tempt to escape only after they had joined up with appellants 1,

2 and 3 and had entered with them Block 6 of the Central Prisons; and that is why they were treated more leniently than appellants 1, 2 and 3.

Counsel for the appellants have submitted during the hearing of these appeals that the appellants committed the offences to which they have pleaded guilty due to the tense psychological state in which they had found themselves in view of the strict security measures which were in force at the Central Prisons; and, also, because some of them were afraid, due to alleged threats made against them by members of the security forces, that they might be killed while they were detained in prison.

Counsel for the appellants have, also, complained that the trial Court did not, in its judgment, deal with these two aspects of the case, though they were placed before it by them in the course of their addresses in mitigation of sentence.

On a plea of guilty a trial Court passes sentence on the basis of the facts expounded by counsel for the prosecution, taking into account any mitigating considerations arising from such facts, or from facts which are placed before it by defending counsel and which are either undisputed or, if disputed, they appear to have been established to its satisfaction by necessary inferences drawn from other indisputable facts or by credible evidence adduced, in a proper case, by the defence, with the special leave of the trial Court.

In the present case there does not exist anything at all on record, other than mere unsubstantiated allegations of counsel for the appellants, which could be treated as establishing directly, or even indirectly, the version of the appellants that all, or any, of them were really afraid that they would be killed while being detained in the Central Prisons, or that they had any valid reason to entertain fears in this connection.

Nor is there anything on record which could lead to the conclusion that the conditions of detention in the Central Prisons had, due to the security measures in force, become of such a nature as to create in the appellants a psychological state which led them to attempt to escape and to commit as acts of sheer desperation the offences to which they have pleaded guilty.

Of course, being detained in a prison, with all the security measures that such detention necessarily entails, is something

which is obviously unpleasant; that is why deprivation of liberty is a mode of punishment; but, it cannot be regarded as a justification for attempting to escape from lawful custody and it is, definitely, utterly unacceptable to treat it as a mitigating factor for the offences of taking hostages and using armed force against the Government in an effort to extort promises for amnesty and free exit from the country. We, therefore, find nothing wrong in the fact that the trial Court has not chosen to deal in particular, at any length, with the just referred to, above, aspects of this case.

We have considered everything that has been placed before the trial Court by way of mitigation, and everything that has been submitted by counsel for the appellants during the hearing of these appeals, even though we have not chosen to refer specifically, in this judgment, to some of the submissions concerned because we did not consider that it was necessary to do so expressly. We have reached the conclusion that, sitting as an appellate Court, we have not been satisfied by the appellants—on whom the onus to so satisfy us lay—that the sentences passed upon the appellants by the trial Court, which had the primary task of assessing such sentences, are manifestly excessive or wrong in principle.

In the present case we are faced with a flagrant instance of use of armed force against the Government of the Republic in an attempt to escape from the Central Prisons, in the course of which there were used firearms and there were kidnapped members of the security forces, namely prison warders and policemen, and were used as hostages.

In Smith and Hogan on Criminal Law, 4th ed., p. 385, there is cited with approval the dictum of East that kidnapping is "the most aggravated species of false imprisonment" (and see, also, in this respect, *R.* v. *Reid*, [1972] 2 All E.R. 1350).

In Glanville Williams on Criminal Law (1978), p. 180, it is stated that charges of kidnapping commonly result in a sentence of life imprisonment.

In *R.* v. *Beagle*, [1975] Crim. L.R., p. 727, the Court of Appeal (Criminal Division) in England reduced to eighteen years a sentence of life imprisonment imposed in relation, *inter alia*, to the offences of kidnapping, false imprisonment, assault, carry-

ing a firearm and blackmail but, in doing so, it observed that kidnapping was a serious crime and, though, fortunately, it was not common, when such a case arose it was imperative that the sentence should be genuinely deterrent; and that in reducing the sentence it had taken into account that the motive was not political and that danger to life was not intended. It is to be noted, further, from the report of the *Beagle* case that, though the appellant in that case, who was twenty-eight years old, was a psychopath with aggressive and paranoid features who got excitement by causing fear and suffering, this factor was not treated as a mitigating circumstance, but as a reason for reaching the conclusion that his crime was very serious and society should be protected from him for a very long time.

Another most grave aspect of the present case is that there have been deliberately used potentially lethal weapons against prison warders and police officers. In Thomas on Principles of Sentencing, *supra*, it is stated (at p. 102) that there is perhaps a greater emphasis on deterrence when the victim of an assault is a police officer than in cases involving assaults on private persons; and it is mentioned therein that in *R.* v. *Probyn* (see, also, p. 93, of Thomas, *supra*) a sentence of twelve years' imprisonment, which was passed on a man who had fired shots from a revolver at police officers who were attempting to arrest him, was upheld. Also, in *R.* v. *Cooper, Davis and Gentry*, (see, Thomas, *supra*, at p. 103) there were upheld on appeal sentences of ten years' and fourteen years' imprisonment which were passed on three men convicted of using firearms with intent to resist arrest.

We regard the cluster of offences to which the appellants have pleaded guilty, and for which they have been sentenced, as constituting an extremely serious breach of public order and, in the light of all that we have stated in this judgment, we do not feel persuaded, in the least, that we should intervene in this case in favour of any one of the appellants, for any of the reasons put forward by his counsel, in order to reduce any of the sentences passed upon him.

In the result all these appeals are dismissed accordingly.

Appeals dismissed.