

1979 May 10

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

MICHALIS SHIAMILI AND 3 OTHERS,

*Appellants.*

v.

THE POLICE,

*Respondents*

*(Criminal Appeals Nos. 4026–4029).*

5 *Criminal Law—Sentence—Gambling—Sections 4, 12, 14 and 15 of  
the Betting Houses, Gaming Houses and Gambling Prevention  
Law, Cap. 151—Sentences of C£ 20 and C£ 35 fine—Whether  
fact that in other countries gambling establishments are permitted  
and fact that betting regarding horse-racing is permitted in Cy-  
prus can be taken into consideration in deciding the appropriate  
sentence—And whether these facts constitute such social changes  
that render infringement of the Law insignificant and as deserving  
a minimal sentence or no sentence at all—Social evil aimed at  
10 being remedied by above Law still existing—Sentences neither  
manifestly excessive nor wrong in principle.*

15 The four appellants pleaded guilty to the offence of gambling  
in a gaming house, contrary to sections 4, 12, 14 and 15 of the  
Betting Houses, Gaming Houses and Gambling Prevention Law,  
Cap. 151. Appellants 1 and 2 were sentenced to pay a fine of  
C£ 20.— each, appellants 3 and 4 a fine of C£ 35.— each and each  
of the four appellants was bound over in the sum of C£ 80.— for  
one year.

20 Upon appeal against sentence Counsel for the appellants  
mainly contended that the said sentences were manifestly ex-  
cessive having regard to all the circumstances of the case and in  
particular to the social changes in our society that have taken  
place since the enactment of Cap. 151 in 1947.

25 The appellants were working class people, the first one, aged  
49 was a decorator; the second, aged 27, was unemployed; the  
third, aged 62, was a mechanic; and the fourth, aged 30, was a

driver. The last two appellants had one similar previous conviction. The maximum sentence provided by Law was six months' imprisonment or C£ 300.- fine or both.

*Held*, (1) that the fact that in other countries legislation permits the operation of gambling establishments, such as Casinos in a regulated or other form and that betting regarding horse-racing is permitted in Cyprus, cannot really be taken into consideration by Courts in deciding the appropriate sentence to be imposed with regard to offences committed under Cap. 151; and that they do not constitute such social changes that render the infringement of the law as merely insignificant and as deserving a minimal sentence or no sentence at all.

(2) That the social evil aimed at being remedied is still, if not more so, existing in our society and it was regrettable that working class people, including an unemployed person, were engaged in a game of chance with the objective of the one getting the meagre money of the other, and definitely at the expense of the needs of their families.

(3) That considering, therefore, the facts and circumstances of the case and everything that was placed before the learned trial Judge which included nothing that should not really be taken into consideration by him when imposing sentence, this Court has come to the conclusion that it should not interfere with the sentences imposed on the appellants, as they are neither manifestly excessive, nor wrong in principle; and that, accordingly, the appeals must be dismissed.

*Appeals dismissed.*

#### **Appeals against sentence.**

Appeals against sentence by Michalis Shiamili and others who were convicted on the 20th March, 1979 by Michaelides, Ag. D.J., at the District Court of Larnaca (Criminal Case No. 9843/78) on one count of the offence of gambling, contrary to sections 4, 12, 14 and 15 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 and appellants 1 and 2 were sentenced to pay a fine of C£ 20 each, appellants 3 and 4 a fine of C£ 35 each and each of them was bound over in the sum of C£ 80 for one year.

*A. Andreou*, for the appellants.

*A.M. Angelides*, Counsel of the Republic, for the respondents.

A. LOIZOU J. gave the following judgment of the Court. The four appellants having been found guilty on their own plea, of gambling in a gaming house, contrary to sections 4, 12, 14, 15 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, were sentenced by the District Court of Larnaca as follows: - Appellants 1 and 2, C£ 20.- fine, each and appellants 3 and 4, C£ 35.- fine each. In addition, each appellant was bound over in the sum of C£ 80.- for one year.

Their appeal is against the sentence imposed on them as being manifestly excessive, having regard to all the circumstances of the case and in particular, "to the social changes in our society that have taken place since the enactment of the aforesaid Law in 1947", and, also that "the trial Court erred in its appreciation of the facts and/or drew unwarranted conclusions therefrom and, in particular, as to the financial condition of the accused, and in consequence thereof it misdirected itself in passing sentence".

The appellants are working class people, the first one, aged 49, is a decorator; the second, aged 27, was at the time unemployed; the third, aged 62, is a mechanic; and the fourth, aged 30, a driver. Of the four appellants only the last two have one previous conviction, each, for gambling, in respect of which appellant 3 was fined £10.- and appellant 4, £6.-. They were found playing at 9.15 p.m. of the 18th November, 1978, the known game of "Sheme" in the coffee-shop of Nicos Pissouriou who was also prosecuted, convicted and sentenced, but who has not appealed.

Appellant 1 had in front of him on the table £ 3.500 mils and £ 70.- in his pocket; appellant 2, had 450 mils in front of him and no money in his pocket; appellant 3 had in front of him £ 3.- and £ 30.- in his pocket and appellant 4, £ 2.750 mils in front of him and £ 27.- in his pocket.

The maximum sentence provided by the law, Cap. 151 as amended by the Increase of Monetary Sentence (Certain Legislative Provisions) Law of 1974 (Law No. 4 of 1974), is six months imprisonment or £ 300.- fine or both such imprisonment and fine; it suggests the seriousness of the offence and the extent of the social evil that this law is aimed at remedying. The fact that in other countries legislation permits the operation of gambling establishments, such as Casinos in a regulated or other

form and that betting regarding horse-racing is permitted in Cyprus, cannot really be taken into consideration by Courts in deciding the appropriate sentence to be imposed with regard to offences committed under this Law, nor that they constitute such social changes that render the infringement of the law as merely insignificant and as deserving a minimal sentence or no sentence at all. 5

The social evil aimed at being remedied is still, if not more so, existing in our society and it was regrettable that working class people, including an unemployed person, were engaged in a game of chance with the objective of the one getting the meagre money of the other, and definitely at the expense of the needs of their families. 10

Considering, therefore, the facts and circumstances of the case and everything that was placed before the learned trial Judge which included nothing that should not really be taken into consideration by him when imposing sentence, we have come to the conclusion that we should not interfere with the sentences imposed on the appellants, as they are neither manifestly excessive, nor wrong in principle. 15 20

For all the above reasons we dismiss these appeals.

*Appeals dismissed.*