

1979 December 20

[TRIANTAFYLIDIS, P., L. LOIZOU, MALACHTOS, JJ.]

CHRISTAKIS AGATHOKLI LOUKAIDES,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4091).

Criminal Law—Sentence—Assault causing actual bodily harm—Section 243 of the Criminal Code, Cap. 154—One week's imprisonment—Appellant's clean record—Offence arising out of an unfortunate misunderstanding—Sentence of imprisonment wrong in principle—
5 *Set aside—Fine of C£10 substituted therefor.*

The appellant was convicted of the offence of assault causing actual bodily harm and was sentenced to one week's imprisonment. The offence was committed when the appellant found the complainant, who was fourteen years old, at night, in a car
10 park where the appellant kept cars for hire on a self-drive basis and mistakenly thinking that he was there with the intention to steal, slapped him in the face. The complainant, who was unknown to the appellant, was a person of unblemished character. No really serious actual bodily harm was caused to
15 the complainant by the appellant, who was a businessman with an otherwise entirely clean record.

Upon appeal against sentence:

Held, (1) that the incident arose out of an unfortunate misunderstanding; that, therefore, it was a case in which it was
20 wrong in principle to pass upon the appellant a sentence of imprisonment; and that, accordingly, it must be set aside.

(2) That having in mind that the appellant has spent in prison two out of the seven days for which he was sent to prison, the proper course for this Court, at this stage, on appeal, is to substitute in the place of the sentence of imprisonment a sentence
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of a fine of C£10 and to maintain the order for costs made against the appellant for the costs of the trial.

Appeal allowed.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Christakis Agathokli Loukaides who was convicted on the 22nd October, 1979 at the District Court of Limassol (Criminal Case No. 9812/79) on one count of the offence of assault causing actual bodily harm, contrary to section 243 of the Criminal Code, Cap. 154 and was sentenced by Korfiotis, D.J. to one week's imprisonment. 5
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C. Tsirides with Chr. Pourgourides, for the appellant.

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

TRIANTAFYLLIDES P. gave the following judgment of the Court. 15
The appellant was convicted on October 22, 1979, by the District Court of Limassol, of the offence of assault causing actual bodily harm, contrary to section 243 of the Criminal Code, Cap. 154. He was, on the same date, sentenced to one week's imprisonment, but on the following day he was released, by the trial Court, on bail pending the determination of this appeal. 20

Counsel for the appellant has, eventually, without making any admission on behalf of the appellant, abandoned the appeal against conviction and argued only that the sentence of imprisonment, which was passed upon the appellant, is manifestly excessive and wrong in principle. 25

The salient facts of the case are that the appellant found the complainant, who is fourteen years old, at night, in a car park where the appellant keeps cars for hire on a self-drive basis and, thinking mistakenly that the complainant was there with the intention to steal, slapped him in the face. The complainant, who was unknown to the appellant, is a person of unblemished character and had gone into the car park in order to urinate there. 30

It is clear from the medical evidence on record that, fortunately, no really serious actual bodily harm was caused to the complainant by the appellant, who is a businessman with an otherwise entirely clean record. 35

It seems to us that this incident arose out of an unfortunate misunderstanding and, therefore, we are of the opinion that this was a case in which it was wrong in principle to pass upon the appellant a sentence of imprisonment. Consequently, it
5 has to be set aside. Having in mind that the appellant has spent in prison two out of the seven days for which he was sent to prison, we think that the proper course for us, at this stage, on appeal, is to substitute in the place of the sentence of imprisonment a sentence of a fine of C£10 and to maintain the order for
10 costs made against the appellant for the costs of the trial.

This appeal is, therefore, dismissed as abandoned in so far as the conviction is concerned, and allowed in relation to the sentence.

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Appeal against conviction dismissed. Appeal against sentence allowed.