

1982 July 28

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

GEORGHIOS KYRIACOU KATSIUO,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4329).

Criminal Law—Sentence—Assessment—Principles applicable—Previous convictions—Effect.

Criminal Law—Sentence—Stealing—Six months' imprisonment—Appellant with several previous convictions—Sentence not manifestly excessive.

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The appellant pleaded guilty to the offence of stealing and was sentenced to six months' imprisonment. He was 26 years of age, a mason by profession, married with one son. The income of the family consisted of £35 per week earned by the appellant and about £30 earned by the wife when engaged in the packing of potatoes during the packing season. The appellant had several previous convictions. In 1976 he was convicted of having committed an unnatural offence, for which he was sentenced to two and a half years' imprisonment. Then there followed a number of offences under the Military Code, such as Desertion and Common Assault, for which he was sentenced to two months' imprisonment and also for the offence of defilement of a girl between thirteen and sixteen years of age for which he was sentenced to two months' imprisonment. His last previous conviction was on the 5th February 1982, for assault occasioning actual bodily harm, for which he was sentenced to six months' imprisonment.

In passing sentence the trial Judge directed himself on the legal principles governing the question of its proper assessment; he referred to the desirability of individualization of sentencing,

to the sympathy that Courts may show to the needs of youth, which, however, must not be carried to extremes to the extent that it may impair the interests of the society as such and that a prison sentence is justified where all other alternatives are not suitable to meet the particular case in hand. He also referred to the previous convictions as capable of forming an aggravating factor not in the sense that they justify a more severe sentence but that leniency which could be applied in the case of the first offender may be withheld in the case of an accused person with previous convictions.

Upon appealing against sentence the appellant prayed for lenience invoking his personal family circumstances and his health which may call for an operation. He stressed that he realized his mistakes and that he intended to emigrate to London after his release from prison.

Held, that this Court is in full agreement with the legal principles followed by the learned trial Judge in assessing the sentence he considered appropriate in the case and has come to the conclusion that this appeal should be dismissed as the sentence imposed could not in any way be considered as manifestly excessive.

Appeal dismissed.

Observations:

- (1) No doubt the plight of the family of a convicted person should be taken care of by the appropriate services of the State as they are innocent of his misdeeds and though they inevitably pay a part of the price for his wrongdoings when they are deprived of their protector and supplier of their livelihood, yet, they should not feel that they are abandoned or neglected by society.
- (2) The question of his health is also a matter that can undoubtedly be adequately dealt with by the Government medical services, which have already taken care of his health.

Cases referred to:

Philippou and Another v. The Republic (1975) 2 C.L.R. 191;
Christophi v. The Police (1971) 2 C.L.R. 216;
Menelaou v. The Republic (1971) 2 C.L.R. 146;
Aloupos v. The Republic, 1961 C.L.R. 250.

Appeal against sentence.

Appeal against sentence by Georghios Kyriacou Katsiou who was convicted on the 12th June, 1982 at the District Court of Larnaca (Criminal Case No. 6667/81) on one count of the offence of stealing contrary to sections 255 and 262 of the Criminal Code, Cap. 154 and was sentenced by Eliades, D.J. to six months' imprisonment.

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Appellant appeared in person.

Cl. Theodoulou (Mrs.), Counsel of the Republic, for the respondents.

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A. LOIZOU J. gave the following judgment of the Court. The appellant was found guilty on his own plea on a charge of stealing contrary to sections 255 and 262 of the Criminal Code, Cap. 154, an offence punishable with a maximum of three years' imprisonment. He was sentenced by a Judge of the District Court of Larnaca to six months' imprisonment and he has appealed against this sentence on the ground that same is manifestly excessive.

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The firm of Charalambous and Anastassiou Ltd., which deals with second-hand cars, accessories and spare-parts, have a garage which is situated between the 4th and 5th milestone of the Larnaca, Dhakelia main road about a hundred meters off the main road. It is in effect an open space fenced with a wire of about five feet height and with a gate as an entrance. They had a guard guarding the place as they had noticed from time to time that spare-parts and accessories were disappearing.

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In the early hours of the morning of the 24th June 1981, their guard went out to check and when at a distance of about a hundred and fifty meters away from the said store he heard a noise and saw a Morris van leaving the area. He gave chase but it disappeared. He then returned to the store and he noticed that certain used spare-parts and accessories had been removed from their place and they had been carried outside the fenced area. They consisted of five radiators, eight springs, five batteries, five clutches and several other smaller spare-parts which were eventually found to have a total value of eight hundred pounds. He stayed around and kept watch and a few minutes later he saw the same Morris van returning to the scene, but as soon as its driver noticed his presence there he

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drove away. Another person took the number of the van, the Police were informed and started their investigations. They found that the owner of the van was the appellant, whom they arrested a few hours later. At first he denied any connection
5 with the removal of these spare-parts and accessories but later he made a voluntary statement admitting having committed the offence.

A social investigation report was produced at his trial and defending counsel referred to its contents which covered the
10 family background, the personal history and the present family and social conditions of the appellant, who is 26 years of age, a mason by profession, married with one son. The income of the family consists of £35 per week wages earned by the appellant, about £30 earned by the wife when engaged in the packing
15 of potatoes during their season.

The appellant has several previous convictions starting in 1976 with having committed an unnatural offence, for which he was sentenced to two and a half years' imprisonment. Then there followed a number of offences under the Military Code.
20 such as Desertion and for Common Assault, for which he was sentenced to two months' imprisonment and also for the offence of defilement of a girl between thirteen and sixteen years of age for which he was sentenced to two months' imprisonment.

His last previous conviction was on the 5th February 1982,
25 for assault occasioning actual bodily harm, for which he was sentenced to six months' imprisonment.

In passing sentence the learned trial Judge directed himself properly on the legal principles governing the question of its proper assessment; he referred to the desirability of individualization of sentencing, to the sympathy that Courts may
35 show to the needs of youth, which, however, must not be carried to extremes to the extent that it may impair the interests of the society as such and that a prison sentence is justified where all other alternatives are not suitable to meet the particular case in
35 hand. He also referred to the previous convictions as capable of forming an aggravating factor not in the sense that they justify a mere severe sentence but that leniency which could be applied in the case of the first offender may be withheld in the

case of an accused person with previous convictions which have been expounded in a number of judgments of this Court, including the cases of *Philippou and another v. The Republic* (1975) 2 C.L.R. p. 191; *Christophi v. The Police* (1971) 2 C.L.R. p. 216; *Menelaou v. The Republic* (1971) 2 C.L.R. p. 146; and *Aloupos v. The Republic*, 1961 C.L.R. p. 250. 5

He then concluded by saying:-

“I have considered very carefully the facts of this case as they have been presented both by the prosecution and the defence as well as to the contents of the social inquiry report concerning the accused. It appears from this that the accused had an unhappy childhood and unhappy family surroundings which had contributed to his anti-social behaviour. One particular aspect of this case is that the offence was committed very soon after the accused came out of prison for a conviction on a count of assault occasioning actual bodily harm, where he was sentenced to six months’ imprisonment. It appears that his imprisonment did not reform him effectively in order to deter him from resorting to illegal behaviour in the future.” 10
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The appellant prayed for lenience invoking his personal family circumstances and his health which may call for an operation in view of the existence of a growth. He stressed that he realized his mistakes and that he intended to emigrate to London after his release from prison. 25

We have considered the circumstances of the case as well as the personal circumstances of the appellant and we are in full agreement with the legal principles followed by the learned trial Judge in assessing the sentence he considered appropriate in the case and we have come to the conclusion that this appeal should be dismissed as the sentence imposed could not in any way be considered as manifestly excessive. 30

No doubt the plight of the family of a convicted person should be taken care of by the appropriate services of the State as they are innocent of his misdeeds and though they inevitably pay a part of the price for his wrongdoings when they are deprived of their protector and supplier of their livelihood, yet, they should not feel that they are abandoned or neglected by society. 35

The question of his health is also a matter that can undoubtedly be adequately dealt with by the Government medical services, which as we understand have already taken care of his health.

For all the above reasons this appeal is dismissed.

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Appeal dismissed.