

1985 November 21

[A. LOIZOU, MALACHTOS, PIKIS, JJ.]

ANDREAS EVRIPIDOU ARISTOTELOUS.

. Appellant,

v.

THE POLICE.

Respondents.

(Criminal Appeal No. 4669).

Criminal Law—Sentence—Stealing by servant contrary to ss. 255 and 268 of the Criminal Code Cap. 154—Fraudulent false accounting contrary to s. 313(b) of the same Code—Relation of trust and confidence between employer and employee—Entitled to adequate protection by Law— 5
Nine month's imprisonment, (the maximum which the trial Judge had jurisdiction to impose, was three years imprisonment) is neither manifestly excessive nor wrong in principle.

The appellant was found guilty on his own plea, of 10
 two offences, one of stealing by servant, contrary to ss. 255 and 268 of the Criminal Code Cap. 154 and the other of fraudulent false accounting contrary to s. 313(b) of the said Code.

The appellant was an employee of Argosy Trading Co. 15
 Ltd., a trading concern, in which he was employed as a Salesman as from December 1982. Every morning the store-keeper was delivering to him the quantities of merchandise that he needed for his daily sales and these quantities were recorded by him in the relevant ledger. After 20
 an audit of appellant's goods it was found that he had falsified to his benefit the figures of debit in respect of four kinds of merchandises. (These constitute the facts in respect of the second count).

As a result of a further audit it was discovered that the 25
 appellant did steal the sum of £1,569, subject matter of the first count, effecting this by using an elaborate system

by making cash sales and recording them as sales on credit or by issuing receipts to imaginary persons as buying on credit.

5 The appellant admitted the above facts upon his arrest, and stated that he had certain financial difficulties. The appellant was separated from his wife and has one young child. His record was clean.

10 The trial Judge imposed on the appellant a sentence of nine month's imprisonment. As the trial Judge correctly observed the maximum sentence which he had jurisdiction to impose was 3 years' imprisonment and for all intents and purposes he treated that as the maximum term provided by Law.

Appellant appealed against sentence.

15 *Held*, dismissing the appeal: The trial Judge rightly took a serious view of the matter. He acted consistently with the guidelines laid down by this Court. Custodial sentences were found by this Court to be appropriate in cases involving breach of trust by employees. The sentence imposed in
20 this case is neither manifestly excessive nor wrong in principle. If anything it was in the circumstances a lenient one.

Appeal dismissed.

Cases referred to:

Attorney-General v. Vassiliotis (1967) 2 C.L.R. 20;

25 *The Attorney-General v. Mavrokefalos*, (1967) 2 C.L.R. 93;

The Attorney-General v. Kyriacos Michael Ttofi, 1962 C.L.R. 225.

Appeal against sentence.

30 Appeal against sentence by Andreas Evripidou Aristotelous who was convicted on the 8th July, 1985 at the District Court of Limassol (Criminal Case No. 29039/84) on one count of the offence of stealing by servant contrary to sections 255 and 268 of the Criminal Code Cap. 154 and on
35 one Count of the offence of fraudulent false accounting contrary to section 313(b) of the Criminal Code, Cap. 154 and

was sentenced by Artemis, S.D.J. to concurrent terms of nine months' imprisonment on each count.

A. Paschalides, for the appellant.

A. M. Angelides, Senior Counsel of the Republic,
for the respondent. 5

A. LOIZOU J. gave the following judgment of the Court. The appellant, who was in the employment of the Argosy Trading Co. Ltd., was found guilty on his own plea, of two offences, one of stealing by servant, contrary to ss. 255 and 268 of the Criminal Code Cap. 154, and the other of fraudulent false accounting, contrary to s.313(b) of the Code. 10

The particulars of the offences are as regards the first one that "the accused, between the 1st day of March, 1983 and the 30th day of November, 1983, both days inclusive, at Limassol, in the District of Limassol, being the servant of the Argosy Trading Co. Ltd., did steal the sum of £1,569, the property of his employer". The particulars of the second offence are that on the 26th November, 1983 at Limassol, being the servant of the said company "with intent to defraud, did make a false entry in the Stock Invoice No. 02926 showing that he (the accused) had as stock four cases of whisky, valued at £233.- more than those debited to him by his employer". 15 20

The maximum sentence provided by law in respect of both offences is seven years' imprisonment, but as rightly observed by the learned trial Judge, three years' imprisonment was the maximum sentence that he had jurisdiction to impose and for all intents and purposes he treated that as the maximum term provided by Law. 25 30

The facts of the case as explained by the prosecution are briefly these. The appellant who is separated from his wife has a young child. The complainant Company, a trading concern, has a branch office in Limassol, in which the appellant was engaged as a salesman as from December 1982 on a monthly salary of £200 including the commissions he was earning. He was also entrusted with a motor-vehicle. 35

Every morning he was taking delivery from the store-keeper of the Company the quantities of merchandise that he needed for his daily sales. He was recording them himself in the relevant ledger and after the entry was duly checked by
5 the Manager of the branch office and the store-keeper and it was found that the appropriate entry debiting the appellant was correct, same was signed by him and these two colleagues. The merchandise was also recorded on the personal card of the appellant. On the morning of the following day
10 he would hand in to the cashier his collections. Every Saturday the branch Manager was checking the appellant and the other salesmen. We are not concerned with the details of the accounting system followed by this Company but this case came to light when on the 30th November 1983,
15 there was the usual check of the appellant and there appeared a deficit of £287.068 mils. There followed an audit of his personal books and it was ascertained that he was falsifying to his benefit the figures of debit in respect of four kinds of merchandise. These constitute the facts in
20 respect of the second count. There followed further audit and ultimately it was discovered that the appellant had stolen the sum subject matter of the first count. He used somehow an elaborate system by making cash sales and recording them as being sales on credit or by issuing receipts to imaginary or unknown persons to the effect that
25 they were buying on credit, whereas he was collecting himself the amounts and telling them that he would credit their accounts with the money he was receiving from them.

30 The appellant when arrested admitted that he had certain financial difficulties and that he misappropriated the amounts by falsifying the receipts or issuing receipts as already described.

The learned trial Judge in passing sentence referred to three cases of this Court, namely the *Attorney-General v. Vassiliotis* (1967) 2 C.L.R. 20; *the Attorney-General v. Mavrokefalos* (1967) 2 C.L.R. 93 and *Attorney-General v. Kyriacos Michael Ttofi*, 1962 C.L.R. 225. They are all cases involving breach of trust by employees and custodial sentences were found by the Supreme Court to be appropriate in this class of cases. In the *Vassiliotis case* (supra)
40 *Vassiliades, P.*, at p. 25 said:

“Stealing by servant tends to undermine the basis, upon which hundreds of people carry on their business as employers, or earn their living as employees. The relationship of trust and confidence which must always exist between them, is of great importance; and is entitled to adequate protection from the Law.” 5

Guided by the aforesaid authorities and after paying due regard to the facts and circumstances of the case very rightly the learned trial Judge took a serious view of the matter and acted consistently with the guidelines laid down by this Court. Moreover the learned trial Judge obviously took into consideration the clean record of the appellant, which invariably is the case with such offenders, and imposed on him the sentences complained of by this appeal as being manifestly excessive in the circumstances. 10 15

Having paid due regard to what counsel for the appellant has said we find no reason to justify any interference on our part as the sentence imposed is neither manifestly excessive nor wrong in principle. If anything it was in the circumstances a lenient one. 20

The appeal therefore is dismissed.

Appeal dismissed.