

1985 February 22

[A. LOIZOU, DEMETRIADES, LORIS. JJ.]

CHRYSOSTOMOS THEOFANOUS,

Appellant.

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4611).

Criminal Law—Sentence—Causing grievous harm—Prevalence of the offence—Could be noticed by trial Judge—Four months' imprisonment on a first offender, twenty years of age—Not manifestly excessive or wrong in principle.

The appellant pleaded guilty to the offence of unlawfully causing grievous harm, contrary to section 231 of the Criminal Code, Cap. 154 and was sentenced to four months' imprisonment. The offence in question was committed when the appellant grabbed the complainant with both hands and pushed him violently in order to expel him from the tavern with the result that the complainant fell on the ground by the step of the entrance. As a result of his fall he suffered a serious fracture of his right knee.

The appellant, who was a first offender, was twenty years of age, a mechanic, and lived with his parents and brothers and sisters in Acropolis area Nicosia, where they built a house on hali-land having been displaced from their home in Kyrenia.

Upon appeal against sentence:

Held, that there are no grounds justifying the interference of this Court with the sentence imposed, the sentence being neither manifestly excessive, nor wrong in principle; accordingly the appeal must fail.

Held, further, that the trial Judge was entitled to notice as he did the prevalence of the offence.

Appeal dismissed.

Appeal against sentence.

5 Appeal against sentence by Chrysostomos Theofanous who was convicted on the 17th January, 1985 at the District Court of Nicosia (Criminal Case No. 16016/84) on one count of the offence of unlawfully causing grievous harm contrary to section 231 of the Criminal Code, Cap. 154
10 and was sentenced by Kronides, D. J. to four months' imprisonment.

K. Koushios, for the appellant.

R. Gavrielides, Senior Counsel of the Republic, for the respondents.

15 A. LOIZOU J. gave the following judgment of the Court. The appellant was found guilty on his own plea by a Judge of the District Court of Nicosia, of a charge of unlawfully having caused on the 17th May, grievous harm to Ioannis Papaloizou of Acropolis, contrary to section 231
20 of the Criminal Code, Cap. 154.

The offence of grievous harm is a felony and carries a maximum term of imprisonment of seven years or a fine or both. After hearing all the facts from the prosecution and the plea in mitigation from Counsel for the appellant and
25 having the benefit of a social investigation report regarding the personal circumstances of the appellant, the learned trial Judge sentenced the appellant to four months' imprisonment and ordered the costs of the prosecution to be paid out of public funds. In passing sentence a brief
30 reference was made by him to the circumstances of the offence and its prevalence and to the personal circumstances of the appellant to which we may usefully refer to in this judgment.

35 Late at night on the 17th May, 1984, the complainant being already in a merry mood visited the tavern "Crystal" which is situated at the corner of Regaena and Germanou Patron street. He ordered a small beer which was served to

him by the waiter. Later he ordered a second one but the waiter refused to serve him, telling him that he was drunk and that the tavern should close for the evening. He winked at the appellant who is a relative of the owner of the tavern and who was there at the time as a client. The complainant noticed this and told them that he would have one more beer and he would go. Upon that the appellant intervened grabbed the complainant with both hands and pushed him violently in order to expel him from the tavern with the result of the complainant falling on the ground by the step of the entrance. As a result of his fall he suffered a serious fracture of his right knee. Shortly after midnight Police Constable Marathovouniotis, who was on patrol in the area, saw the complainant there who reported to him the incident. Together with other Policemen took him to the Hospital in which he was kept until the 9th June 1984 having had an operation on his leg.

The appellant, who is a first offender, is twenty years of age, a mechanic, he lives with his parents and brothers and sisters in Acropolis area Nicosia, where they built a house on hali-land having been displaced from their home in Kyrenia.

The learned trial Judge felt that the appropriate sentence in the circumstances was that of imprisonment, after noting as he was entitled to do the prevalence of such offences which called for a strict application of the Law as a deterrent measure. He further noted that though violent the push of the complainant by the appellant the latter had not "planned in advance to cause the serious injuries which the appellant suffered".

On the totality of the circumstances before us, we have come to the conclusion that there are no grounds justifying our interference with the sentence imposed, the sentence being neither manifestly excessive, nor wrong in principle.

For all the above reasons the appeal is dismissed but in the circumstances there will be no order as to costs.

Appeal dismissed.