

1985 March 18

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

1. AKIS PLOUTIS AKRITA,
2. ONISIFOROS CHARALAMBOUS,

Appellants,

v.

THE POLICE,

Respondents.

(Criminal Appeals Nos. 4618—4619);

5 *Criminal Law—Sentence—Taking part in an affray and disturbance—Appellants spectators of a football match and offences committed after it had finished—Need for deter-*
10 *rence—Sentence of two months' imprisonment on appel-*
lant 1, a first offender, and of three month's imprison-
ment on appellant 2, who had a previous conviction, not
manifestly excessive.

15 *Criminal Procedure—Sentence—Outstanding offences—Proce-*
dure for taking them into consideration in passing sen-
tence should be employed—Section 81 of the Criminal
Procedure Law, Cap. 155—Appellant sentenced to three
months' imprisonment for offence of taking part in an
20 *affray which was made to run at the expiration of a*
sentence of imprisonment for a far more serious offence
committed subsequently to the above offence—Offence
of affray could have been taken into consideration if an ap-
plication to that effect was made—Sentence therefor made
to run from day it was imposed.

25 The appellants pleaded guilty to the offences of taking
part in an affray and disturbance. Appellant No. 1 a first
offender, was sentenced to two months' imprisonment; and
appellant 2, who had a previous conviction, was sentenced to
three months' imprisonment with a direction that his sen-
tence should commence at the expiration of a sentence of
30 imprisonment that he was serving for a far more serious
offence committed subsequently to the above offences.
The direction was made by virtue of the provisions of sec-
tion 117 of the Criminal Procedure Law, Cap. 155. The

above offences were committed at the end of a football match and the trial Judge gave emphasis on deterrence.

Upon appeal against sentence:

Held, (1) that this Court fully endorses the approach of the trial Judge and the emphasis on deterrence; that peace and order at football matches depend entirely on the self-control to be exercised by the spectators and there should not be ignored the difficulty that the Police, outnumbered at times by the crowd, face in preventing or stopping such misbehaviour; and that, therefore, neither sentence imposed in this case is manifestly excessive justifying this Court's interference. 5 10

Held, further, that once appellant No. 2 was undergoing a term of imprisonment for a far more serious offence committed subsequently to this incident, there was room for him to be offered the opportunity to come out of prison after serving the length of that sentence and not to have to serve an additional sentence for an offence which might have been taken into consideration if an application to that effect was made and which, could not have added that much to what the Assize Court in Limassol thought fit to impose on him in that case; and that, accordingly, his appeal is allowed to the extent that the sentence of imprisonment passed on him should be considered as running from the date it was imposed and concurrently with that imposed on him by the Assize Court. 15 20 25

Appeal of appellant 1 dismissed.

Appeal of appellant 2 allowed. 30

Per curiam:

Accused persons and counsel should avail themselves of the provisions of the procedure regarding outstanding offences as prescribed by section 81 of our Criminal Procedure Law. 35

Appeal against sentence.

Appeal against sentence by Akis Ploutis Akrita and another who were convicted on the 18th February, 1985 at the District Court of Larnaca (Criminal Case No. 12018/84) on one count of the offence of taking part in a fight con- 40

rary to section 95 of the Criminal Code, Cap. 154 and were sentenced by G. Nicolaou, D. J. to three and four months' imprisonment, respectively.

A. Koukounis, for appellant No. 1.

5 Appellant No. 2 appeared in person.

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

A. LOIZOU J. gave the following judgment of the Court. In the afternoon of the 27th October, 1984, when the bootball match between "Nea Salamina" and "Apollon" Clubs, finished there was a lot of excitement among the followers of the two teams outside the G.S.Z. stadium at Larnaca, where it had taken place. There were altercations, incidents and affrays which the Police tried to stop and prevent from spreading. The two appellants were fighting each other and Policemen managed to arrest them and take them to the Police station. In the exchange of blows the first appellant was slightly wounded because of a blow with a walking stick with which the second appellant hit him and which was broken.

Both were charged with taking part in an affray, contrary to section 89 and with disturbance, contrary to section 95 of the Criminal Code. The maximum punishment provided for the first offence is one year's imprisonment whereas for the latter three months. The first appellant is a first offender, whereas the second appellant had a previous offence of breaking utensils in a place of entertainment and disturbance for which he was bound for the sum of £200 for one year to be of good behaviour and keeping the peace.

The learned trial Judge sentenced the first appellant on the first count to two months' imprisonment and the second appellant to three months' imprisonment on the same count and directed that the sentence on this second appellant should commence at the expiration of the sentence of imprisonment that he was serving, and this he did by virtue of the provisions of section 117 of the Criminal Procedure Law, Cap. 155. What it appears it had a decisive effect as regards the assessment of the appropriate sentence was the frequency with which, as the learned trial Judge observed,

such offences occur, offences of affray and other breaches of the peace in relation to the holding of football matches, a situation which has to be discouraged by the Court if sports, and in particular football is to offer pleasure to the peaceful and law abiding public.

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We endorse fully the approach of the learned trial Judge and the emphasis on deterrence. Peace and order at football matches depend entirely on the self-control to be exercised by the spectators and there should not be ignored the difficulty that the Police, outnumbered at times by the crowd, face in preventing or stopping such misbehaviour.

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We have given due regard to the able address of counsel for the first appellant and also to what the second appellant has said and we have come to the conclusion that neither sentence imposed in this case is manifestly excessive, justifying this Court's interference.

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As regards, however, the second appellant it may be considered in his favour that once he is undergoing a term of imprisonment for a far more serious offence committed subsequently to this incident, there was room for him to be offered the opportunity to come out of prison after serving the length of that sentence and not to have to serve an additional sentence for an offence which might have been taken into consideration if an application to that effect was made and which, to our mind could not have added that much to what the Assize Court in Limassol thought fit to impose on him in that case.

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We take this opportunity to point out that accused persons and counsel should avail themselves of the provisions of such procedure regarding outstanding offences as prescribed by section 81 of our Criminal Procedure Law.

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For all the above reasons the appeal of the first appellant (Crim. App. No. 4618) is dismissed. The appeal of the second appellant (Crim. App. No. 4619) is allowed to the extent that the sentence of imprisonment passed on him should be considered as running from the date it was imposed and concurrently with that imposed on him by the Assize Court.

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Appeal No. 4618 dismissed.

Appeal No. 4619 partly allowed.

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