

1986 November 13

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

SOPHOCLIS THEODOROU,

*Appellant.*

v.

THE REPUBLIC,

*Respondent.**(Criminal Appeal No. 4754).*


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*Sentence—Defilement of a girl under thirteen years of age, contrary to section 153(1) of the Criminal Code, Cap. 154, false swearing, contrary to ss. 117 and 35 of the same code, as amended by Law 35/74 and obtaining a passport by making a false statement in a material particular, contrary to s. 2 of the Passports (False Representations) Law, Cap. 111—Four years' imprisonment for the first of the said offences, nine months for the second and six months for the third offence, the sentences to run concurrently—Conduct of complainant's parents, who allowed the appellant to sleep in the same bed with their daughter, taken by trial Court as a mitigating factor, but conduct of appellant around and following the defilement treated as an aggravating factor—Sentences upheld.*

The appellant, aged 46, married with seven children, used on occasion to spend the night in the home of the complainant's parents, on account of his having differences with his wife. The parents of the complainant allowed him to sleep with their daughter, almost thirteen years of age, in the same bed. The appellant took advantage of the situation and deflowered the complainant and had repeatedly carnal knowledge with her. When the complainant remained pregnant, the appellant, in order to avoid prosecution, managed to obtain a passport in the name of his daughter Georghoula, but with the photograph of the complainant on it.

The appellant and the complainant went to Athens, where they stayed for 4½ months. When they returned to Cyprus, the appellant was arrested and was eventually, upon his own plea, convicted for the said offences and sentenced to the aforesaid terms of imprisonment

In passing sentence the Assize Court took into consideration as a mitigating factor the conduct of the parents of the complainant, but considered that the conduct of the appellant around and following the commission of the offence of defilement as an aggravating factor.

The appellant argued that the sentence was manifestly excessive, urging that he will make amends to the complainant and recognise the paternity of the child

*Held, dismissing the appeal:* (1) Offences of this nature should be viewed by the Courts as the law makes it abundantly clear. They call for severe sentences for the purpose of protecting young girls, who can easily be the victims of exploitation by older and unscrupulous persons

(2) The Courts have on the one hand to protect the young and on the other hand to demonstrate their eagerness to uphold the moral standards which should and indeed govern our society.

*Appeal dismissed.*

#### **Appeal against sentence.**

Appeal against sentence by Sophoclis Theodorou who was convicted on the 28th May, 1986, at the Assize Court of Limassol (Criminal Case No. 7237/86) on one count of the offence of defilement of a girl under thirteen years of age contrary to section 153(1) of the Criminal Code, Cap. 154 on one count of the offence of false swearing contrary to sections 117 and 35 of the Criminal Code and on one count of the offence of obtaining a passport by making a false statement contrary to section 2 of the Passports (False Representations) Law, Cap. 111 and was sentenced by Hadjitsangaris, P.D.C., Artemis, S.D.J. and Hadjihambis, D. J. to four years' imprisonment on count 1,

nine months' imprisonment on count 2 and six months' imprisonment on count 3.

Appellant appeared in person.

A. *Vassiliades*, for the respondent.

A. LOIZOU, J. gave the following judgment of the Court. 5  
The appellant was found guilty, on his own plea, of three  
counts, namely defilement of a girl under thirteen years of  
age, contrary to s. 153(1) of the Criminal Code, Cap. 154,  
false swearing, contrary to ss. 117 and 35 of the  
Criminal Code, Cap. 154, as amended by Law No. 46 of 10  
1974, and obtaining a passport by making a false state-  
ment in a material particular, contrary to s. 2 of the Pass-  
ports (False Representations) Law, Cap. 111.

He was sentenced by the Assize Court of Limassol to  
four years' imprisonment on the first count, nine months 15  
imprisonment on the second count and six months'imprison-  
ment on the third count, the sentences to run con-  
currently as from the 13th March, 1986.

The facts of the case are these. The appellant is forty-  
six years of age, married with seven children. The com- 20  
plainant at the material time was almost thirteen years  
of age, having been born on the 13th April 1972. The  
appellant had friendly relations with the parents of the  
complainant and members of her family were working in  
his farm. On many occasions he used to spend the night 25  
in their home on account of his having differences with  
his wife. He was allowed by the parents of the complainant  
to sleep in the same bed with their daughter. The ap-  
pellant took advantage of this despicable conduct of the  
parents and he deflowered the complainant and had carnal 30  
knowledge of her between the 1st January and the 15th  
March 1985. Out of this relation the complainant re-  
mained pregnant.

When he was informed by her of that, he decided to take  
her abroad in order to avoid prosecution. He obtained a 35  
birth certificate of his daughter Georghoula and he visited  
the Chairman of his quarter, whom he misled and secured  
from him the certification of the photograph of the com-

plaintiff as being that of his daughter Georghoula, and the chairman at his request filled in the relevant form which he subsequently used for the issue of passport No. B180-682 in the name of his daughter Georghoula but with the photograph of the complainant on it.

On the 30th May, 1985, the wife of the appellant visited the village of the complainant and informed her parents about the relations of their daughter with her husband and asked that the complainant be examined by a doctor in order to prove that she was pregnant. On the same day the appellant visited the complainant and together with her father they went to Larnaca and spent the night in a hotel. On the following day he left with her by air for Athens, the complainant using the passport he obtained in the name of his daughter Georghoula. They stayed in Athens until the 16th October 1985, when they both returned to Cyprus.

At the port of entry the appellant was arrested on the strength of a judicial warrant. When informed of the reasons of his arrest and cautioned he said that he had decided to come to be tried for the mistake he had made and that the young girl was pregnant. Some time later the complainant gave birth to the child.

In passing sentence the Assize Court took into consideration as a mitigating factor the conduct of the parents of the complainant, yet, in their view they said that did not take away the seriousness of the offence and the conduct of the appellant who abused the behaviour of the parents of the complainant. The Assize Court further considered that the conduct of the appellant around and following the commission of the offence constituted an aggravating factor for himself, because instead of realising his mistake and terminating his relation with her, he continued having repeated carnal knowledge of her.

The appellant appealed against the sentence imposed on him on the ground that same was manifestly excessive. In arguing in person his appeal, having chosen not to take advantage of the opportunity we offered to him for an adjournment if he so wished, for the purpose of engaging an advocate, he urged that he will make amends

to the complainant and recognise the paternity of the child, the offspring of his abhorrent criminal conduct.

We have considered what was said by him in his effort to persuade us that the sentence imposed was manifestly excessive but we find no merit in his appeal. Offences of this nature should be viewed by the Court as the law itself makes it abundantly clear as being serious and that they call for severe sentences for the purpose of protecting young girls whose judgment and the ability to decide correctly is not sufficiently developed and who can easily be the victims of exploitation by older and unscrupulous persons. The Courts have on the one hand a duty to protect the young and on the other hand to demonstrate their eagerness to uphold the moral standards which should and indeed govern our society.

For all the above reasons the appeal is dismissed.

*Appeal dismissed.*