

1988 July 4

(A. LOIZOU, P., DEMETRIADES, KOURRIS, JJ.)

- 1. SAMIR ANTOINE KASSAR,
- 2. ANTOINE R. HAGE,

*Appellants,*

v.

THE REPUBLIC,

*Respondent.*

*(Criminal Appeal No. 4925),*

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*Sentence — Possessing of controlled drug (23 grams of cocaine) and possessing of such drug with intent to supply it to other persons — Three and half years' imprisonment on each count, sentences to run concurrently — On the lenient side — Courts should be minded to impose heavier sentences.*

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*Sentence — Mitigating factors — Entrapment by agent provocateur — In cases involving drugs may not even be considered as such a factor.*

*Criminal Law — Agent provocateur — Entrapment by — It is not a substantive defence.*

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The facts of this case appear sufficiently from the hereinabove headnote.

*Appeal dismissed.*

*Cases referred to:*

*Kyriakides v. The Republic* (1983) 2 C.L.R. 94;

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*El-Etri v. The Republic* (1985) 2 C.L.R. 40.

**Appeal against conviction and sentence.**

Appeal against conviction and sentence by Samir Antoine Kassar and Another who were convicted on the 22nd October, 1987 at the Assize Court of Nicosia (Criminal Case No. 28867/87) on one count of the offence of possessing 23 grams of cocaine contrary to sections 2, 3, 6(1)(2), 30 and 31 of the Narcotic Drugs

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and Psychotropic Substances Laws 1977-1983 and on one count of the offence of possessing narcotic drugs for the purpose of supplying them to other persons contrary to sections 2, 3, 6(1)(3), 30 and 31 of the above-laws and were sentenced by Artemides P.D.C., Kronides, S.D.J. and Eleftheriou, D.J. to concurrent terms of 3 1/2 years' imprisonment on each count.

G. *Georghiou*, for appellant in Criminal Appeal No. 4925.

M. *Kyprianou*, Senior Counsel of the Republic with A. *Vassiliades*, for the respondent.

10 A. LOIZOU P. gave the following judgment of the Court. The appellant was jointly charged with two other persons and was found guilty after a long hearing, of the offence of possessing twenty-three grams of cocaine contrary to sections 2, 3, 6 (1) and (2), 30 and 31 of the Third Schedule of The Narcotic Drugs and  
15 Psychotropic Substances Laws, 1977 to 1983 and Order No. 139 of 1979, and of the offence of possessing the same quantity of narcotics for the purpose of supplying others, contrary to sections 2,3, 6(1)(3) 30 and 31 of the same law. He was sentenced to three and half years' imprisonment on both counts. sentences to run  
20 concurrently.

In passing sentence, the Assize Court dealt with the mitigating circumstances as regards another co-accused who appeared to have played a leading role in the whole affair and in particular his degree of complicity and in order to avoid, as it thought, any  
25 disparity of sentence it imposed a similar sentence on that accused who was appellant in Criminal Appeal 4924, which has just been withdrawn.

The facts of the case are briefly these. The ex-appellant as first accused on the information and the present appellant had  
30 conceived and laid a plan for the sale of cocaine after having offered themselves to the Police to act as police informers. Indeed the Police accepted from ex-appellant the offer in consideration of renewing his residence permit in Cyprus, where he had been staying for about two years unemployed. He had played, as found  
35 by the Assize Court, the leading role in the whole affair as he had made the contacts with the Police to which he was giving vague and of no significance pieces of information whilst together with the present appellant put into operation the plan to sell cocaine for their own profit. Obviously their «status» as police informers was to

give them an alibi and a possible, in their view, defence in case they were caught.

The third co-accused, an Egyptian, was the one who introduced to them the prospective purchaser who was in actual fact a police informer. 5

Originally the offer was for one to two grams of cocaine but it was the police informer who had asked fifty grams of cocaine for the price of £2000. It seems that the Police acting through their informer wanted to find out whether these two suppliers were in possession of a larger quantity of cocaine. Also the Police gave to the informer the £2000, in order to show them to the suppliers. 10

The Assize Court also accepted the fact that the two suppliers were encouraged to supply the supposed purchaser with a bigger quantity than that in respect of which the deal was to be concluded. 15

It may usefully be said here, though the point was not raised on appeal, that the question of entrapment by the use of an agent provocateur was dealt with at length by this Court in the cases of *Kyriakides v. The Republic* (1983) 2 C.L.R. 94 and *Ahmat Ali El-Etri v. The Republic* (1985) 2 C.L.R. 40, where it was held that entrapment is not a substantive defence in a criminal case but only a matter which may be relevant in mitigation of sentence. Yet the use of police informers and under cover agents may not even be a mitigation in cases regarding the discovery of drugs, if in particular no exceptional persuasion is used to overcome reluctance as offences like trading in drugs have to be faced with legitimate means though not always absolutely. 20 25

In arguing the case of the appellant against conviction learned counsel has urged that the appellant was entitled to the defence provided in section 10 of the Criminal Code, i.e., of a mistake of fact and in support of that defence he has invited the attention of the Court to certain pieces of evidence whereby the co-accused had contacts with the Police and through whom the appellant delivered a counterfeit dollar bill which was later returned to him and as a result of this contact he was expected to inform the police about the consignment of counterfeit currency notes that were to be brought to Cyprus for circulation. The policeman in question was positive however in rejecting any suggestion by counsel in the course of the cross-examination that he had engaged the said co-accused and this appellant as police informers. 30 35 40

The evidence adduced was dealt with extensively by the Assize Court in its elaborate judgment and it rejected the version of the appellant that he had an honest and bona fide belief that by assisting the said co-accused, to trade in narcotics, he was acting as a police informer, and therefore, he was exonerated as he claimed of any liability.

We have no reason to interfere with the findings of fact made by the trial Court and the conclusions drawn thereon which are duly warranted by the totality of the evidence adduced. The defence, therefore, under section 10 of the Criminal Code was rightly found not to be available to this appellant on the facts of this case. The appeal, therefore, against conviction fails.

As regards his appeal against sentence, considering the trend of sentencing in cases of narcotics as affirmed by this Court on appeal, and the gravity of the offences of dealing with cocaine which belongs to the category of hard drugs which can bring nothing but death to the prospective users and indeed victims of such cruel and murderous trade, we find that the sentence imposed was not excessive but indeed a lenient one.

It is time that for this category of offences, taking due notice of the fact that the Legislator, has increased the sentences regarding these offences, Courts should be minded to impose heavier sentences taking, naturally into account, not only their gravity but also their prevalence and the desired aim of discouraging «visitors» to Cyprus from using its territory as a place of either dealings in, or transhipment of narcotics.

The appeal therefore against sentence is also dismissed. It is with reluctance that we have not increased the sentence, but this approach should not be taken as a precedent that this Court will not be ready to do so, in a proper case in the future, in order to demonstrate its abhorrence for such offences.

*Appeal dismissed.*