[BOURKE C.J. AND ZEKIA J.]

REGINA

v.

SOFOCLIS GEORGHIOU.

(Criminal Appeal No. 2113).

Criminal Law—Sentence—General Principles—Revision of sentence on appeal.

The appellant was convicted of the offence of publishing seditious documents and sentenced to one year's imprisonment. On appeal against sentence on the ground that it was manifestly excessive,

Held : that the Appeal Court didnot alter a sentence on the mere ground that if members of the Court had been trying the appellant they might have passed a somewhat different sentence, and it would not ordinarily interfere with the discretion exercised by a trial Judge unless it was evident that the Judge had acted upon some wrong principle or overlooked some material factor. The sentence must be manifestly excessive in view of the circumstances of the case before the Court would interfere.

R. v. *Gumbs* (1926) 19 Cr. App. R. 74 ; and

R. v. *Sherskewsky* (1912) 28 T.L.R. 364, followed.

Observations on the general principles on which sentences should be passed.

Appeal dismissed.

Cases referred to :

(1) *R.* v. *Gumbs* (1926) 19 Cr. App. R. 74.

(2) *R.* v. *Sherskewsky* (1912) 28 T.L.R. 364.

(3) *R.* v. *Ball* (1951) 35 Cr. App. R. 164.

Appeal against sentence.

The appellant was convicted by the Special Court in Nicosia (Case No. 1680/57) on the 1st August, 1957, of the offence of publishing seditious documents contrary to section 57 (*b*) of the Criminal Code as amended by section 2 of Law 27 of 1949 and section 8 of Law 20 of 1955, and was sentenced by Ellison, Special Justice, to one year's imprisonment. The facts of the case are fully set out in the judgment of the Court.

Lefkos Clerides for the appellant.

H. Gosling for the Crown.

August 13. BOURKE C.J. announced that the appeal would be dismissed, and that their Lordships would give their reasons later.

September 9. Their Lordships' reasons for dismissing the appeal were delivered by :

BOURKE C.J. : On the dismissal of this appeal against sentence it was intimated that we would give our reasons later, which we now proceed to do.

The appellant was charged before the Special Court with the offence of publishing seditious documents contrary to section 57 (*b*) of the Criminal Code, as amended by section 2 of Law 27 of 1949 and section 8 of Law 20 of 1955. The offence is a felony and carries as penalty a maximum term of imprisonment for three years. At the outset of the trial the appellant pleaded not guilty but at the close of the case for the prosecution he altered his plea to one of guilty upon which a conviction was entered. After hearing Counsel in mitigation the learned Justice indicated certain factors that weighed with him in assessing sentence and he inflicted a penalty of one year's imprisonment.

The appeal was against the sentence on the ground that it " was manifestly excessive in that (*a*) the appellant is 17 years old ; (*b*) a first offender ; (*c*) the number of leaflets distributed were only 15 ; (*d*) another person who escaped justice was also jointly responsible for the distribution of the leaflets ".

The circumstances were that about 8.00 p.m. on 30th June the appellant and another youth scattered about 30 copies of this seditious pamphlet among the audience in a cinema during the performance. They were observed by two members of the Military Police and the appellant, who endeavoured to escape, was apprehended. The other person concerned managed to get away. It is apparent that at one stage an ugly situation arose, which might have developed into something a good deal more serious. The two Military Policemen were set upon by persons in the cinema ; chairs were raised and some were thrown.

The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless it is evident that the Judge has acted upon some wrong principle or overlooked some material factor (*R.* v. *Gumbs*, 19 Cr. App. R. 74). To this might be added a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case, *R.* v. *Sherskewsky* (1912) 28 T.L.R. 364.

In argument before this Court, while it was conceded that the offence was of a serious nature, much was made of the age of the appellant of which, as is apparent from

the record, the learned Justice was fully cognisant. It is of course well-known that this offence concerned with the dissemination of subversive and seditious propaganda is not only very prevalent but is generally committed by youths such as the appellant. If these persons choose to transgress the criminal law on such a scale in time of emergency they cannot complain if upon conviction they are visited with the full rigours of that law and are treated with severity. As was said in *R.* v. *Ball*, 35 Cr. App. 164 —" In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it". It has been urged upon us as a ground for interference with the sentence in this case that it is not uniform ; it was said that the usual penalty inflicted for this type of offence is a small fine or the accused is merely bound over to keep the peace and be of good behaviour. While exceptional circumstances may justify such leniency even under present conditions, we are certainly not aware of any such standardised practice, nor do we credit that Judges and Justices of the Special Court are so unalive to realities and the principles of punishment as to fail in their duty by the pursuit of any such general practice.

We were of the opinion that in passing sentence the lower Court acted upon no wrong principle and overlooked no material factor. In the judgment of this Court the sentence could not validly be said to be excessive. The appeal was accordingly dismissed.

Appeal dismissed.