

EKATERINI SOTERIOU *alias* "NINA" of Larnaca

v.

Appellant

THE QUEEN

Respondent.

(Criminal Appeal No. 2206)

1958
Oct. 20

EKATERINI
SOTERIOU
v.
THE QUEEN

Criminal Law—Sentence—Principles upon which a Court of Appeal will review sentences—General principles on which sentences should be passed—Mitigating factor disregarded by the trial judge.

Emergency Powers—Bombs etc.—Possession or Control of—The Emergency Powers (Public Safety and Order) Regulations 1955 to No. 3 1958, Reg. 52 A (c).

The appellant was convicted of having under her control bombs etc. contrary to Regulation 52 A (c) (*supra*) and sentenced to twelve years imprisonment. The bombs and other incriminating materials were found in large quantities in the house where the appellant was residing with her husband.

In assessing the sentence the trial judge completely disregarded the fact that the appellant was a married woman, the suggestion on her behalf being that she was acting to a certain extent under the influence of her husband. The learned Judge thought that there was no sufficient evidence in support of the submission that the appellant was a married woman. He disregarded, therefore, the possibility that she might have acted to a certain extent under the influence of her husband. It was further contended on behalf of the appellant that the sentence of 12 years' imprisonment was unreasonably excessive.

Held (varying the sentence): (1) Regard being had to the prevalence of the offence, a very heavy sentence is eminently justified.

R. v. Ball, 35 Cr. App. R. 164, and the decision of the Court of Criminal Appeal in the case of *Regina v. Fitzgerald* ("The Times" of the 14th October, 1958, *unreported*), considered with approval.

(2) The principles upon which this Court will act in exercising its jurisdiction to review sentences are firmly established and were set out yet once again in the case of *R. v. Sofoclis Georghiou*, Cr. Appeal No. 2113 of 1957 (*Note*: Reported in 22 C.L.R. 147).

(3) There was, however, enough material in evidence before the trial Judge to resolve in favour of the appellant the question whether she was a married woman living with her husband in the house where the bombs and the other incriminating material were found. Had the Judge concluded that she was married it is possible, having regard to her statements, that he might have been led to conclude that the appellant acted to some extent under the influence of her husband and that this factor would have weighed with him when estimating an appropriate term of imprisonment. *For this reason only the sentence will be reduced to one of nine years' imprisonment.*

Appeal allowed. Sentence reduced to one of nine years' imprisonment.

Cases referred to :

R. v. Sofoclis Georghiou, 22 C.L.R. 147 ;

R. v. Ball, 35 Cr. App. R. 164 ;

Regina v. Fitzgerald, (unreported) in "The Times" newspaper of the 14th October 1958, a decision of the Court of Criminal Appeal.

Appeal against sentence.

The appellant was convicted on the 23rd September 1958 by the Special Court of Nicosia (C.V. Boyle, Judge) in Criminal Case No. 1386/58 of having under her control bombs, fuses and detonators, contrary to the Emergency Powers (Public Safety and Order) Regulations 1955 to No. 3, 1958, Reg. 52 (A) (c) and sentenced to twelve years' imprisonment.

She appeals against that sentence.

Glascos Clerides for the appellant.

R. Grey for the respondent.

The judgment of the Court was read by :

BOURKE, C.J. : This is an appeal against sentence. The appellant, a young woman of 19 years of age, was found guilty of having under her control in the house where she resided, a large quantity of bombs and the parts of bombs including fuses, detonators, explosives and time pencils, which led the learned Judge of trial, not inappositely we think, to describe the place as a "bomb factory". She was sentenced to twelve years' imprisonment.

The principles upon which this Court will act in exercising its jurisdiction to review sentences are firmly established

and were set out yet once again in *Sofoclis Georghiou v. The Queen*, Cr. A. No. 2113 (1957) (1). The youth of this country of either sex should know that any offence of this kind will be dealt with by the extreme severity. In the judgment of this Court a very heavy sentence is eminently justified for this serious offence in times of terrorism when hardly a day passes that a bomb or bombs are not thrown or exploded for the purpose of extinguishing life and damaging property. As was indicated by the Court of Criminal Appeal in England in *Regina v. Fitzgerald* (published in "The Times" of 14th October, 1958), the principle must be observed that the punishment must fit the crime and it was not always the case that the punishment must fit the criminal. To that we would add the following words of the same Court in *R. v. Ball*, 35 Cr. App. R. 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".

There is only one aspect of the present case that has given us some difficulty. It is submitted that there was sufficient evidence before the lower Court to show that the appellant was a married woman living with her husband in this house. Learned Counsel for the Crown supports this contention and points out that it was never in dispute that she was married. We think that there was enough material in evidence to resolve this question in her favour. The learned Judge, however, thought the evidence was insufficient. Had he concluded that she was married it is possible, having regard to her statements, that he might have been led to conclude that she had acted to some extent under the influence of her husband and that this factor would have weighed with him when estimating an appropriate term of imprisonment. For this reason only we think it proper to reduce the sentence to one of nine years' imprisonment.

*Appeal allowed. Sentence reduced
to one of nine years' imprisonment.*

(1) 22 C.L.R. 147.