

1963  
Sept. 27

[WILSON, P., ZEKIA, VASSILIADES, AND JOSEPHIDES, JJ.]

STELIOS  
MICHAEL  
HJI  
AGAPIOU  
*alias* MAVROS  
v.  
THE POLICE

STELIOS MICHAEL HJI AGAPIOU *alias* MAVROS,  
*Appellant,*  
v.  
THE POLICE,  
*Respondents.*

(*Criminal Appeal No. 2667*)

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*Criminal Law—Sentence—Contradictory statements contrary to section 113 (2) of the Criminal Code, Cap. 154—Maximum sentence of three years' imprisonment imposed—It is a proper sentence considering that the contradictory statements were given in a case of great importance, in an area where there is a great deal of serious crime and where there has been a great deal of crime in the list for hearing with which the Courts must deal severely.*

*Criminal Procedure—Trial in criminal cases—Sentence—Giving evidence with regard to sentence—Statements by counsel—In cases where the penalties are likely to be severe, apart from statements at the Bar, there may be other material upon which the trial Court or the appellate Court can form their decision—This may take the form of a statement by the accused, or general evidence as to character as well as any other material relevant to sentence—Also, in a proper case, opportunity should be given to call evidence relevant to the assessment of sentence.*

**Appeal against sentence.**

The appellant was convicted on the 7th August, 1963, at the District Court of Limassol, (Criminal Case No. 6460/63) on one count of the offence of contradictory statement contrary to section 113 (2) of the Criminal Code, Cap. 154 and was sentenced by Limnatis, D.J., to three years' imprisonment.

*Appeal dismissed.*

*A. P. Anastasiades* for the appellant.

*V. Aziz* for the respondents.

The facts sufficiently appear in the judgment of the Court delivered by :

WILSON, P. : This is an appeal from the sentence of three years' imprisonment imposed on the appellant

on August 8, 1963, after he pleaded guilty to a charge of making a contradictory statement contrary to section 113 (2) of the Criminal Code, Cap. 154.

The only ground of appeal is that the sentence is considered by the appellant to be excessive.

A very able argument has been submitted by counsel on his behalf, falling under two headings :

(1) Hardship caused to the family of the accused in the event of the sentence remaining as imposed ; and

(2) That the Court ought not to have imposed the maximum sentence which the Criminal Code allows.

The submission made is that the facts of this case do not justify such a penalty.

In our opinion, the appellant must show that the sentence was manifestly excessive or wrong in principle in order to succeed in his appeal. In this case, of course, only the second of these two grounds needs to be considered.

We are of the opinion that contradictory statements were given in a case of great importance, in an area where there is a great deal of serious crime and where there has been a great deal of crime with which the Courts must deal severely.

At the present time there are six murder cases, I believe, in the list for hearing at the Limassol Assizes, which are said to be the heaviest in its history. It cannot be said, therefore, that the failure of a witness to be consistent with his statement to the police or to give satisfactory explanations for changes in it, is not a matter of great importance to the administration of justice in the whole island.

The Judge, who tried this case, had before him the plea of guilty by the accused, which means that he admitted the offence and all that it implies. In our view, there are no extenuating circumstances, and the trial Judge proceeded to impose, what we believe was, the proper sentence.

Counsel for the appellant has pointed out to us the difficulty that he, and, perhaps other counsel have had, in making submissions to trial Judges on the question of giving evidence to the Court with respect to sentence.

Now, in what I am about to say : I do not wish it to be taken that this Court in any way intends that the

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practice of counsel making submissions after a plea of guilty is to be completely discarded. Usually in minor cases this serves the very useful purpose of expediting trials and can be done without risk to the proper administration of justice. However, there are cases in which evidence should be taken by trial Judges.

It is almost impossible to lay down a rule of general application but, in any event, in cases where the penalties are likely to be severe there should be on record material upon which the trial Judge and, in case of appeal, this Court can form their decision as to sentence. This, apart from statements at the Bar, may take the form of a statement by the accused, if he wishes to make it, or general evidence as to his character as well as any other material relevant to sentence. Also where counsel requests permission to call evidence relevant to the assessment of sentence, after a conviction has been made, he must, in a proper case, be given the opportunity to do so.

For the reasons, which have been given, the appeal will be dismissed. The sentence will run from to-day.

*Appeal dismissed.*