

PANAYIOTIS GEORGHIOU ALEXANDROU "VRAKAS"  
"PATITOUTSIS,"

*Appellant,*

v.

THE POLICE,

*Respondents.*

PANAYIOTIS  
GEORGHIOU  
ALEXANDROU  
"VRAKAS"  
'PATITOUTSIS'

v.  
THE POLICE

(Criminal Appeal No. 2853)

*Criminal Law—Carrying a knife, ending in a sharp point, outside the curtilage of one's house, contrary to section 82 (2) of the Criminal Code, Cap. 154—Such provision is primarily intended to protect persons normally to be found outside the curtilage of one's house—On its own facts the present case is not one of those against which section 82 (2) (supra) has been mainly aimed—Sentence of six months' imprisonment reduced.*

*Criminal Procedure—Sentence—Appeal against—Principles upon which the Court of Appeal will interfere with sentences—The Appellate Court will intervene and vary a sentence if it finds it to be wrong in principle or manifestly excessive—See under Criminal Law above and under sentence below.*

*Knife—Carrying a knife ending in a sharp point etc. etc. contrary to section 82 (2) of the Criminal Code, Cap. 154—See above.*

*Sentence—Undue weight given to certain previous convictions—Extent to which it is properly open to a court in passing sentence to take into account previous convictions—See, also, above.*

*Previous convictions—How far a court should take them into account in passing sentence—See above.*

The appellant was quarrelling with his wife in his house and, as a result, in the heat of the moment, he got hold of the knife referred to in the charge ; in the course of the quarrel the appellant—still carrying the pointed knife—and his wife found themselves outside the curtilage of their house, in a neighbouring field ; thus the appellant found himself charged with an offence contrary to section 82 (2) of the Criminal Code, for which he was tried, found guilty and sentenced to six months' imprisonment.

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Section 82 (2) and (3) of the Criminal Code; Cap. 154 provides :--

" (2) Any person who wears or carries a knife ending in a sharp point outside his house or the curtilage thereof, is guilty of a misdemeanour and is liable to imprisonment for one year and, notwithstanding anything to the contrary in sections 29, 32, and 33 of this Code contained, is liable to a minimum sentence of imprisonment of six months unless the Court, in all the circumstances of the case including consideration of hardship and similar mitigating circumstances personal to the convicted person, thinks it expedient to impose a lesser sentence or make any other order."

(3) Whenever any lesser sentence is imposed or any other order is made under sub-section (2) of this section, the Court shall record the reasons for the imposition of such sentence or making such order."

The Supreme Court in allowing the appeal and reducing the sentence to one of three months' imprisonment :--

*Held*, (1) section 82 (2) of the Criminal Code (*supra*) prohibits the carrying about of pointed knives, in order to avoid the commission of crimes therewith ; it is, thus, primarily intended to protect persons normally to be found outside the curtilage of one's house.

(2) On its own facts the present case is not of those against which section 82 (2) has been mainly aimed. The appellant carried the pointed knife outside the curtilage of his house by chance and in the heat of the moment and not through any intended or reckless disregard of the prohibition of section 82 (2) (*supra*).

(3) In the circumstances we are of opinion that it was wrong in principle not to impose a lesser sentence than the six months which is normally prescribed by the said section 82 (2) (*supra*).

(4) As laid down in, *inter alia*, *Tryfona and the Republic* 1961 C.L.R. 246 this Court is entitled to intervene on appeal and vary a sentence if it finds it to be wrong in principle and manifestly excessive. For the reasons set out in this judgment, and in the light of the particular facts of this case, we find the sentence of six months' imprisonment imposed on the appellant to be both wrong in principle and manifestly excessive, even after taking into account, to the extent

properly open to a court in passing sentence the fact that the appellant is anything but a first offender (see *Stratos v. The Police* XVII C.L.R. 73)

(5) We, therefore, reduce, the sentence of six months' imprisonment to one of three months'.

*Appeal allowed. Sentence reduced accordingly.*

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Cases referred to .

*Stratos v. The Police* XVII C.L.R. 73, followed ;

*Tryfona v. The Republic* 1961 C.L.R. 246 followed.

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

Appeal against the sentence imposed on the appellant who was convicted on the 12th October, 1966 at the District Court of Kyrenia (Criminal Case No. 1094/66) on one count of the offence of carrying a knife ending in a sharp point contrary to sections 82 (2) and 85 of the Criminal Code Cap. 154, and was sentenced by Savvides D.J. to six months' imprisonment.

Appellant, in person.

*E. Odysseos*, on behalf of the Attorney-General, for the respondents.

The judgment of the Court was delivered by :

TRIANTAFYLIDIS, J.: The appellant appeals against the sentence of six months' imprisonment which was imposed on him after he had been found guilty of carrying, at Vassilia, on the 12th August, 1966, a knife, ending in a sharp point, outside the curtilage of his house, contrary to section 82 (2) of the Criminal Code (Cap. 154).

In short, the facts of the case are that the appellant was quarrelling with his wife and, as a result, in the heat of the moment, he got hold of the knife in question ; in the course of the quarrel the appellant—still carrying the knife—and his wife found themselves outside the curtilage of their house, in a neighbouring field ; thus, the appellant found himself charged with an offence contrary to section 82 (2) of Cap. 154, for which he was tried, found guilty and sentenced to six months' imprisonment.

We agree with the view of the trial Court that the offence for which the appellant has been sentenced is, indeed, a serious one. We do think, however, with respect, that

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in holding that he was " not justified in not committing the accused to prison for six months " the learned trial Judge did not make due allowance for the fact that the present case is not a typical case of contravention of section 82 (2) of Cap. 154.

Such provision prohibits the carrying about of pointed knives, in order to avoid the commission of crimes therewith ; it is, thus, primarily intended to protect persons normally to be found outside the curtilage of one's house ; of course, no one is allowed by law to use a pointed knife against the members of his own family, but the mere possession or carrying thereof within the curtilage of one's house does not constitute an offence under section 82 (2).

On its own facts this case is not one of those against which section 82 (2) has been mainly aimed : The appellant, who got hold of a pointed knife within the curtilage of his house, thus committing no offence contrary to section 82, —and incidentally during the heat of the moment, in the course of a family quarrel—found himself outside the curtilage of his house, holding such knife, by sheer force of events, and as a result he was found guilty of an offence contrary to section 82 (2). The appellant carried the pointed knife outside the curtilage of his house by chance and not through any intended, or reckless, disregard of the prohibition of section 82 (2).

In the circumstances, we are of the opinion that it was wrong in principle not to impose a lesser sentence than the six months which is normally prescribed by virtue of section 82 (2).

Moreover, it appears from the remarks of the learned trial Judge, in passing sentence, that, in taking into account the previous convictions of the appellant, he has not given Applicant credit for the fact that appellant's last previous conviction involving violence dates as far back as the 31st October, 1958—and even then it could not have been a really serious case because he was only bound over at the time. The offence in respect of which the appellant has been bound over on the 19th February, 1965, for three years, in the sum of £50, to be of good behaviour, was not one involving violence.

As laid down in *inter alia*, *Tryfona v. The Republic*, (1961 C.L.R. p. 246) this Court is entitled to intervene on appeal and vary a sentence if it finds it to be wrong in principle and manifestly excessive. For the reasons

already set out in this judgment, and in the light of the particular facts of this case, we find the sentence of six months' imprisonment imposed on the appellant to be both wrong in principle and manifestly excessive, even after taking into account, to the extent properly open to a court in passing sentence, (*Stratos v. Police*, XVII C.L.R. 73) the fact that the appellant is anything but a first offender.

We have decided, therefore, that, in the light of all relevant considerations, we should reduce the sentence passed on appellant to one of three months' imprisonment as from the date of conviction ; his current recognizance to remain in force.

*Appeal allowed. Sentence reduced accordingly.*

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