[TRIANTAFYLLIDES, STAVRINIDES, JJ. AND LOIZOU, AG. J.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

YIANNACOS PROCOPIOU MAVROKEFALOS,

Respondent.

(*Criminal Appeal No.* 2851)

Criminal Law—Sentence—Appeal against sentence by the Attorney-General as being manifestly inadequate—Stealing contrary to section 268 *of the Criminal Code, Cap.* 154*—Sentence increased as being manifestly inadequate—Principles laid down in several cases* (infra) followed and applied*—Stealing by persons in the employment of Co-operative Societies—Prevalence and seriousness of the offence—The Court of Appeal is entitled to take judicial notice,* virtute officio, *of the prevalence or not of the offence or of a certain class of offences—Sentence of imprisonment imposed by the Court of Appeal instead of the sentence of fine imposed by the trial Court—Ill health of the respondent—Directions of the Court as to the proper regimen to be arranged in prison—Delay in reporting the matter to the police, is a factor to be taken into account in mitigation of sentence.*

Delay in reporting the case to the Police—May be a mitigating factor in imposing sentence—See above.

Judicial Notice—Court of Appeal may take judicial notice, virtute officio, *whether a certain class of offences is prevalent or not—See, also, under Criminal Law, above.*

Prevalence of a certain kind of offences—Meaning—Offences can be said to be "prevalent" if they are "common"—And not of those isolated cases which present no need for deterrence—See, also, under Criminal Law, Judicial Notice above.

Sentence—Manifestly inadequate—Principles applicable—See above.

Cases referred to :

The Attorney-General v. *Kouppis and Others* 1961 C.L.R. 188 at p. 197 ;

The Attorney-General v. *Stavrides* 1962 C.L.R. 220 ;

The Attorney-General v. *Trofi* 1962 C.L.R. 225 at p. 226 ;

The Attorney-General v. *Mozoras* (1963) 1 C.L.R. 144 ;

Ioannou v. *The Police XVIII* C.L.R. 46 at p. 56.

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THE ATTORNEY-GENERAL OF THE REPUBLIC
v.
YIANNACOS PROCOPIOU MAVROKEFALOS

Appeal against sentence.

Appeal by the Attorney-General of the Republic against the insufficiency of the sentence imposed on the respondent who was convicted on the 6th October, 1966 at the District Court of Kyrenia (Criminal Case No. 954/66) on 2 counts of the offences of stealing by clerk and servant and fraudulent false accounting contrary to sections 268 and 313 (*c*), respectively, and was sentenced by Savvides, D.J., to pay a fine of £120 on count 1, was bound over in the sum of £100 for two years, to keep the peace, on count 2, and he was further ordered to pay £81.070 mils costs of prosecution.

M. Spanos, Counsel of the Republic, for the appellant.

G. Ladas, with *L. Clerides*, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, J.: In this case the Attorney-General of the Republic has appealed against the sentence imposed, on the 6th October, 1966, by the District Court of Kyrenia, in criminal case No. 954/1966, on the respondent, Yiannacos Procopiou Mavrokefalos of K. Dhicomo, when he pleaded guilty to :—

Stealing, contrary to section 268 of the Criminal Code, Cap. 154, the sum of £713.893 mils, the property of the Cooperative Stores of K. Dhicomo, between the 2nd day of April, 1963 and the 8th day of July, 1965, while he was the clerk of the said Stores—(Count 1) ; and

Omitting, during the same period, by way of fraudulent accounting, contrary to section 313 (*c*) of the Criminal Code, Cap. 154, to enter the above mentioned sum in the books of the Cooperative Stores in question—(Count 2).

The sentence imposed on the respondent by the trial Court was £120 fine, on the first count, and he was bound over in the sum of £100, for two years, to keep the peace and to be of good behaviour, on the second count. He was also ordered to pay £81.070 mils costs of the prosecution.

The appellant contends that the sentence imposed on respondent is manifestly inadequate in view of the seriousness and prevalence of the offences concerned.

The learned trial Judge did duly direct himself that the offences in question were serious ; it is, also, clear, from his remarks, in passing sentence, that he had in mind that similar cases have been recurring before other courts in the Island, too. He refrained, however, from sending the respondent to prison, having taken into account that the respondent had a previously good record ; that he had been in custody, already, for 14 days ; that he had paid all the deficiency in question, before the case was reported to the police ; and that he was a person of ill-health and had, whilst in custody, to be detained in hospital.

It is well settled that this Court will not intervene, on an appeal of this kind, unless it is satisfied that the sentence imposed is manifestly inadequate (vide *The Attorney-General* v. *Kouppis and Others*, 1961 C.L.R., p. 188, *The Attorney-General* v. *Stavrides*, 1962 C.L.R., p. 220, *The Attorney-General* v. *Ttofi*, 1962 C.L.R., p. 225 and *The Attorney-General* v. *Mozoras*, (1963) 1 C.L.R. 144.

That the offences to which the respondent has pleaded guilty are very serious is not really in dispute ; they are, both, felonies punishable with imprisonment up to seven years.

The seriousness of offences of this kind—and particularly when committed by persons in the employment of co-operative societies, as in the present case—has been stressed in the past at the highest judicial level ; without, in the least, losing sight of the principle that the sentence in each case has to be fitted to the particular circumstances thereof, it is useful to bear in mind that in *Ioannou* v. *The Police* (XVIII, C.L.R., p. 46) Jackson, C.J. had this to say (at p. 56) :—

> " The sentence on the charge on which we have confirmed the conviction was six months imprisonment and, in passing it, the District Judge observed that the appellant, using a position of trust which he held as secretary of the co-operative society in his village, put into execution ' a plan of fraud '. There can be no doubt, from the evidence given at the trial, that the particular theft for which the appellant was convicted did not stand alone and, though small in itself, was part of a substantial fraud against a considerable number of people who trusted him and whose trust he flagrantly abused. We are strongly of opinion that

the sentence of six months' imprisonment on him was too lenient and we accordingly increase it to an imprisonment for a year".

Also, in *The Attorney-General* v. *Ttofi*, (*supra*)—a case of fraudulent accounting by a co-operative society employee—Wilson, P. had this to say (at p. 226):

"In respect of the fraudulent accounting the Court imposed fines varying from £10 to £15, according to the nature of the count.

The conclusion expressed by the learned trial Judge that this is a very serious type of offence is concurred by this Court but we are also of the opinion that fines are not adequate penalties. We have not overlooked the fact that the accused has made reimbursement. Nevertheless there are still too many of these cases and we take the view in this case that there must be sentences of imprisonment. The terms we are about to impose would have been much heavier but for the particular facts of this case, in which we include, of course, the reimbursement which has been made, although not too much credit should be given because there was a bond and the bondsmen would probably have had to make good the defalcation, at least in part.

It is quite possible that in future cases, where the Law permits, and unless this offence ceases to be as common as it is now, we shall feel called upon to impose substantially longer terms of imprisonment than we are going to impose this time."

And then sentences varying from one year's to two years' imprisonment were imposed on the respondent in that case, in respect of various counts of false accounting.

Counsel for respondent has contested the allegation of the appellant that the offences in question are prevalent; on the other hand, counsel for the appellant, has tried to show that such offences are prevalent by referring this Court to similar cases, recently dealt with by Assize Courts all over Cyprus.

We do not, indeed, think that it is necessary for us to go at any great length into this issue. We do take the view that this Court is entitled to take judicial notice, *virtute officio*, of the prevalence or not of a certain class

of offences. We are of the opinion that offences, such as the present ones, are prevalent, in the sense that they are, unfortunately, " common ", as it has been put in *The Attorney-General and Ttofi* (*supra* at p. 226). The present case is certainly not one of those isolated cases which present no need for deterrence, and in relation to which a Court could, possibly, show great leniency.

We have duly considered all that which the learned trial Judge has taken into account in not imposing a sentence of imprisonment on the respondent, as well as all that has been so ably argued before us by counsel appearing for him.

We have taken, particularly, into account the fact that respondent has paid off in full the relevant deficiency, and before the case was reported to the police—even though here, as in the case of *Ttofi* (*supra*), there did exist bondsmen responsible for such deficiency and the complainant Cooperative Stores would probably have recovered their loss in the end, in any case.

We have borne in mind, also, the long and, in our opinion, not justified delay in reporting the matter to the police. There is no doubt that such delay has kept the respondent in suspense, causing him prolonged anxiety ; it is, in our view, the kind of delay which we are entitled to take into account in mitigation of punishment (see the case of *Kouppis*, *supra*, at p. 197).

We have taken fully into consideration the ill-health of the respondent, who is suffering from bronchial asthma ; though the existence of such affliction has not been established on oath before the trial Court, we are quite prepared to accept as correct the relevant medical certificates, once they have not been contested by the prosecution at the trial.

In the light of everything, including the circumstances of the case, the seriousness and recurrence of the offences concerned, as well as all mitigating factors, we are unable to reach the conclusion that, in a case of this nature, the learned trial Judge has not erred too much on the side of leniency and that a sentence of only a fine, as imposed, is not manifestly inadequate and wrong in principle ; we are of the view that anything less than a term of imprisonment of six months cannot properly meet the situation.

It is hereby ordered, therefore, that the sentence imposed by the trial Court, on both counts, shall be set aside and that, instead, there shall be imposed a sentence of six months' imprisonment on each count, to run concurrently, as from today. In the circumstances, however, we find it proper not to burden the respondent with the costs of the prosecution and we direct that they should be borne by the Republic.

We do draw the attention of all responsible authorities to the ill-health of the respondent, so that his regimen in prison may be arranged accordingly and that he may be afforded such treatment as he may stand in need of. We have no doubt that if it is proved that he is in need of being removed to hospital, during his imprisonment, all necessary steps in that direction will be taken forthwith ; and should things develop in such a way that the term of imprisonment imposed on the respondent should have to be curtailed in the interests of his health, there are, of course, ample powers vested in the Executive Branch of the Government to meet the situation ; but, at this stage, we do not, and cannot, express any opinion at all, in this respect.

Appeal allowed. Sentence increased.