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ATTORNEY-GENERAL OF THE REPUBLIC
v.
NEOPHYTOS NICOLA VASILIOTIS *alias* KAIZER AND ANOTHER

[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,

v.

NEOPHYTOS NICOLA VASILIOTIS *alias* KAIZER AND ANOTHER,
Respondents.

(Criminal Appeal No. 2870)

Criminal Law—Sentence—Stealing by servant contrary to section 268 of the Criminal Code, Cap. 154—Receiving stolen property contrary to section 306 (a) of the Criminal Code—Appropriate sentence—Seriousness of the offence—Principles applicable—Personal matters, such as ill health, age, clean record, should certainly be taken into account in imposing sentence—But they should not be allowed to outweigh the requirements of properly applying the law in the particular case—Moreover, a sentence must have the effect of indicating in the most practical way the seriousness of the offences concerned—And of acting as deterrent to other potential offenders—See, also, below.

Criminal Procedure—Appeal—Sentence—Appeal against sentence by the Attorney-General—Principles upon which the Appellate Court will increase sentences imposed by trial Courts—In the present case the trial Court misdirected itself as to the principles which must guide trial Courts in imposing sentences—And imposed sentences manifestly inadequate—Which this Court increased—By substitution for sentences of heavy fines—Of sentences of imprisonment—See, also, above.

This is an appeal by the Attorney-General against the sentence imposed by the District Court of Nicosia on the two respondents for stealing and receiving, respectively, on the ground that the sentences are manifestly inadequate. The first respondent, a man of 47 years of age and a first offender, was convicted on his own plea on a charge of stealing from his employer 26 motor-car tyres and three batteries, all valued at £177, contrary to section 268 of the Criminal Code, Cap. 154. The second respondent, a man of 57 years of age and a first offender, described as a tyre repairer, was convicted on his own plea for receiving the major part of the aforesaid stolen property, contrary to section 306 (*a*)

of the Criminal Code. In passing sentence the trial Judge, taking into consideration that " both accused are first offenders, of ill health and advanced in age ", and that they made a full confession to the police, decided not to impose a sentence of imprisonment, and proceeded to impose a sentence of £120 fine on the first respondent, and £50 fine on the second.

The Court, finding that the aforesaid sentences were against principle and manifestly inadequate, increased them by substituting therefor sentences of imprisonment, and in allowing the appeal by the Attorney-General :—

Held, (1) stealing by servant tends to undermine the basis upon which hundreds of people carry on their business as employers, or earn their living as employees.

(2)—(*a*) Personal matters, such as age, ill health and clean record, should, of course, be taken into consideration in imposing sentence on the particular offender.

(*b*) But they should not be allowed to outweigh the requirements of properly applying the law in the particular case.

(*c*) Moreover, a sentence must have the effect of indicating in the most practical way the seriousness of the offences concerned ; and of acting as deterrent to other potential offenders.

(3) In the present case the sentences imposed by the trial Judge are manifestly inadequate and we are of opinion that he misdirected himself as to the principles which must guide the Court in administering the Criminal Law, and in imposing sentence. The principles laid down in *Michael "Iroas"* v. *The Republic*, (1966) 2 C.L.R. 116, apply equally where the sentence is manifestly inadequate.

(4) The ill health of the offenders in the present case is a matter which will be duly taken care of by the appropriate authority and cannot possibly constitute a reason for which a sentence of imprisonment should not be imposed, where the circumstances of the case call for it.

(5) We, therefore, allow the appeal ; set aside the sentences imposed including the costs ; and we substitute therefor the following sentences : Respondent 1, twelve months' imprisonment from to-day on count 1 ; Respondent 2 on the

two counts for receiving twelve months' imprisonment from today, respectively, to run concurrently. Costs to be borne by the State.

Appeal allowed. Sentences imposed by the District Court set aside and sentences of imprisonment substituted therefor as above. Costs by the State.

Cases referred to :

Iroas v. *The Republic* (1966) 2 C.L.R. 116.

Appeal against sentence.

Appeal by the Attorney-General of the Republic against the inadequacy of the sentence imposed on the respondents who were convicted on the 18th November, 1966, at the District Court of Nicosia (Stylianides, D.J.) (Criminal Case No. 18949/66) and respondent No. 1 was sentenced to pay a fine of £120 for the offence of stealing by clerk and servant contrary to section 268 of the Criminal Code, Cap. 154, and respondent No. 2 was sentenced to pay a fine of £50 for the offence of receiving, contrary to section 306 (*a*) of the Criminal Code.

A. Frangos, Counsel of the Republic, for the appellant.

L. Clerides, for respondent No. 1.

G. Tornaritis, for respondent No. 2.

Cur. adv vult.

The following judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal by the Attorney-General of the Republic against the sentence imposed by the District Court of Nicosia on the two respondents, for stealing and receiving respectively, on the ground that the sentences are manifestly inadequate in the circumstances of this case.

The first respondent, a man of 47 years of age, described in the charge as driver, was convicted on the 18th of November last, on a charge of stealing 26 motor-car tyres and three batteries all valued at £177,100 mils, the property of his employer, to which he pleaded guilty, apparently on the advice of his counsel, on whose application the original plea of not guilty was withdrawn by leave of the Court at the opening of the trial.

The second respondent, a man of 57 years of age, described as a tyre repairer, was, likewise, convicted on his own plea, for receiving on one occasion 22 of the stolen tyres and one battery valued at £136.400 mils, and on a subsequent occasion 4 tyres and 2 batteries, valued at £40.700 mils, of the said stolen property, knowing the same to have been stolen.

The facts, as stated by the prosecuting officer, after plea, are, shortly, according to the record, that the first respondent, who was employed as a salesman by the dealer of the stolen property, brought to the shop of the second respondent the stolen goods, and sold them to him at an obviously low price, allowing considerable profit to the receiver. Acting upon information, the police found the stolen goods in the shop of the second respondent, and arrested both respondents on charges of stealing and receiving the goods in question.

Both respondents made statements to the police after caution, in which they tried, each in his own way, to exculpate themselves with excuses, to which I need hardly refer as they are not of much help to the respondents either from the legal or the moral aspect of the case.

Learned counsel for the first respondent submitted to the trial judge in mitigation, that his client, a married man with two children who had served as a policeman for fourteen years and was a first offender, should not be made the scapegoat and be punished for what he must have done in co-operation with other persons. The Court was, moreover, informed that he was a man of poor health suffering of ulcer, for the treatment of which he was about to travel abroad for an operation ; and that his financial position is good.

On behalf of the receiver, learned counsel submitted in mitigation, that he was not the mind behind this unlawful operation and that he also was a man of poor health ; and of good financial position.

In passing sentence, the learned trial Judge took into consideration, according to his note on record, that " both accused are first offenders of ill health and advanced in age ", and that they made a full confession to the police. For these reasons, and with great reluctance—the trial Judge says—he decided not to pass a sentence of imprisonment, and proceeded to impose a sentence of £120 fine, and in default nine months' imprisonment on the first respondent, for stealing ; and sentences of £100 fine or in default 8 months' imprisonment, and £50 fine or in default 4 months'

imprisonment, upon the second respondent, for the two charges of receiving. He, moreover, made an order for the payment of £6,250 mils costs against the first respondent.

From these sentences the Attorney-General appealed to this Court on the ground that, in the circumstances of the offences under consideration (both of which are apparently of a serious nature) the sentence imposed by the trial Court is manifestly inadequate.

Learned counsel for the respondents, on the other hand, submitted that the responsibility for imposing sentence in a criminal case, rests with the trial Court. And the Court of Appeal should not interfere with the discretion of the trial Court in imposing sentence, unless he acted on wrong principle, or imposed a sentence manifestly inadequate; which should not be taken to mean merely different from the sentence which the Judges on appeal would have imposed if the case were before them at first instance.

The approach of the Court of Appeal to a case of this nature has been stated in a number of cases before this Court. I need only refer to a very recent one, *Michael "Iroas"* v. *The Republic*, (1966) 2 C.L.R. 116, decided where the judgment of the Court at page 118 reads :—

> "This Court has had occasion to state more than once in earlier cases that the responsibility for imposing the appropriate sentence in a case, lies with the trial Court. The Court of Appeal will only interfere with a sentence so imposed, if it is made to appear from the record that the trial Court misdirected itself either on the facts, or the law; or, that the Court, in considering sentence allowed itself to be influenced by matter which should not affect the sentence; or if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case."

The same, of course, applies where the sentence imposed is manifestly inadequate.

The charge of stealing by servant, upon which the first respondent stands convicted, preferred under section 268 of the Criminal Code (Cap. 154) is punishable with imprisonment for seven years. And the offence of receiving is punishable under section 306 (*a*) of the Code, with imprisonment for five years. That is sufficient to indicate the seriousness of the offences in the mind of the legislature, regarding which we need say no more in this judgment.

The consent of the Attorney-General for summary trial, in this particular case, indicates that, in his view, a sentence

within the jurisdiction of a single District Judge, would be sufficient to meet the crime ; *i.e* a sentence not exceeding three years' imprisonment.

Stealing by servant tends to undermine the basis, upon which hundreds of people carry on their business as employers, or earn their living as employees. The relationship of trust and confidence which must always exist between them, is of great importance ; and is entitled to adequate protection from the Law.

In this particular case, the learned trial Judge appears to have had in mind the seriousness of the offence from the severe and unusually high fines which he imposed ; but, apparently, he has given too much importance to the age of the offenders, their ill health, and the fact that they are first offenders. All these personal matters should be taken into consideration in imposing sentence on the particular offender. But they should not be allowed to outweigh the requirements of properly applying the law in the particular case. Moreover, a sentence must have the effect of indicating in the most practical way the seriousness of the offences which we are here concerned with ; and of acting as deterrent to other potential offenders.

We are unanimously of the opinion that the learned trial Judge in this case misdirected himself as to the principles which must guide the Court in administering the Criminal Law, and in imposing sentence.

The ill health of the offenders in this particular case, is a matter which will be duly taken care of by the authority concerned. Poor health cannot possibly constitute a reason for which a sentence of imprisonment should not be imposed, where the circumstances of the case and the law, call for it.

We are of the opinion that this case calls for a sentence of imprisonment. We, therefore, allow the appeal ; set aside the sentences imposed by the District Court including the order for costs ; and we substitute the sentences in question as follows : Respondent No. 1, on count 1 : twelve months' imprisonment from today. Respondent No. 2, on count 3, twelve months' imprisonment from today ; on count 4, the same term to run concurrently. The costs of prosecution to be borne by the State.

Appeal allowed. Sentences of the District Court substituted as above.