[VASSILIADES, P, TRIANTAFYLLIDES AND JOSEPHIDES, JJ]

DIOGENIS SAVVA KARAVIOTIS AND 4 OTHERS,
Appellants,

v.

THE POLICE,
Respondents

(*Criminal Appeal Nos* 2962, 2963, 2964, 2965 & 2966)
(*Consolidated*)

Criminal Law — Sentence — Imprisonment — Excessive sentence — Common assault and public disturbance contrary to sections 242 *and* 95, *respectively, of the Criminal Code, Cap* 154—*Imprisonment—Suitability of imprisonment in a sentence—Principles applicable—Approach of Supreme Court in appeals against sentence—Principles restated—See, also, under Imprisonment herebelow*

Criminal Procedure—Appeal—Sentence—Approach of Supreme Court in appeals against sentence—See above

Sentence—Appeal against sentence—Principles upon which the Supreme Court will interfere with sentences imposed by trial Courts—See, also, above under Criminal Law Criminal Procedure—See, also, herebelow

Imprisonment—Suitability of imprisonment in a sentence—Principles applicable— Deterrence, mainly in the public interest and protection— Rehabilitation, mainly in the interest of the offender— Retribution, in the proper enforcement of the law—All these matters having to be considered and weighed together with the consequences and probable effect of imprisonment on the particular offender

These five appeals arise from the same case before the District Court of Nicosia, where the five appellants were jointly prosecuted on a charge-sheet containing eleven counts, ten for common assault under section 242, and one for public disturbance under section 95, of the Criminal Code, Cap 154 All five appeals are taken against the sentence of two months imprisonment for each of the eleven counts, concurrently, on the ground that the sentence is manifestly excessive

In allowing the appeal only as regards appellant No 4, dismissing the appeals of the other four appellants, the Court —

Held, (1) the approach of this Court in appeals against sentence was stated in a number of cases The Court of

Appeal will only interfere with a sentence imposed by the trial Court, 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 punishment, allowed itself to be influenced by matter which should not affect the sentence. Or, else, if the sentence imposed is manifestly excessive in the circumstances ; or manifestly inadequate. (See *Nicolaou* v. *The Republic* (1966) 2 C.L.R. 60 at p. 61 ; *Michael Afxenti "Iroas"* v. *The Republic* (1966) 2 C.L.R. 116 at p. 118 ; also, *The Attorney-General* v. *Vasiliotis and Another* (reported in this part at p. 20 *ante*).

(2) As to the suitability of imprisonment in a sentence, the matter was also discussed in previous cases, one of which is *Panayiotis Mirachis* v. *The Police* (1965) 2 C.L.R. 28 at p. 32. " When all other alternatives are considered unsuitable to meet the particular case in hand, the Court may well have to resort to imprisonment..... But in such a case, the sentence has to be justified upon one of the purposes to be served by such a sentence. Rehabilitation, mainly in the interest of the offender ; deterrence, mainly in the public interest and protection ; retribution, in the proper enforcement of the law ; all these matters have to be considered and weighed together with the consequences and probable effect of imprisonment on the particular offender ".

(3) In the circumstances, of this case, we have to find sufficient justification for interfering with the sentence imposed. Giving the matter our best consideration we were not able to arrive at the conclusion that the sentence of two months was manifestly excessive, in the circumstances, excepting the case of appellant No. 4. There, a labourer of 54, without previous convictions, the elderly man we see now before us, could hardly, we think have played the same role in the attack as the other four appellants, so much younger in age.

(4) Appeals of appellants No. 1, 2, 3 and 5 dismissed with directions that their sentence shall run from the date of conviction. In the case of appellant 4 the appeal is allowed and his sentence will be reduced to one month's imprisonment from conviction, on each count, to run concurrently.

Appeals of appellants 1, 2, 3, *and* 5 *dismissed. Appeal of appellant* 4 *allowed. Order in terms.*

Cases referred to :

Nicolaou v. *The Republic* (1966) 2 C.L.R. 60 at p. 61 ;

Michael Afxenti "Iroas" v. *The Republic* (1966) 2 C.L.R. 116 at p. 118 ;

The Attorney-General v. *Vasiliotis and Another* (reported in this part at p. 20 *ante*) ;

Panayiotis Mirachis v. *The Police* (1965) 2 C.L.R. 28 at p. 32.

Appeal against sentence.

Appeal against sentence imposed on the appellants who were convicted on the 17th October, 1967 at the District Court of Nicosia (Criminal Case No. 12409/67) on 11 counts of the offences of common assault and disturbance contrary to sections 242 and 95 of the Criminal Code Cap. 154, respectively, and were each sentenced by Stavrinakis, D.J., to two months' imprisonment on each count, the sentences to run concurrently.

X. Clerides, for the appellants.

K. Talarides, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P.: The five appeals under consideration arise from the same case before the District Court of Nicosia, where the five appellants were jointly prosecuted on a charge-sheet containing eleven counts ; ten for common assault under section 242, and one for public disturbance under section 95, of the Criminal Code, (Cap. 154) ; all arising from the same incident.

All five appeals are taken against the sentence of two months imprisonment for each of the eleven counts, concurrently, on the ground that the sentence is manifestly excessive in the circumstances.

All appellants pleaded guilty to all counts charged ; and the facts of the case were stated by the prosecuting officer and were further described by counsel in his address in mitigation before sentence. They are fairly simple albeit not very clear.

The five appellants with some 15 other passengers were travelling in a bus from Nicosia to Morphou late in the afternoon of March 19, 1967. The first appellant was the driver of the bus. They were returning to their village, Kato Pyrgos, and were rather in a hurry, according to their advocate, as they would have to pass near the Turkish village of Limnitis, which they would rather do in daylight.

After passing through Akaki village, about 13 miles from Nicosia, they found the road blocked with a crowd of some 20 or 30 people who had gathered there when another bus full of passengers went off the wet road, and stopped in the nearby field. The passengers of this bus, including a number of women, had alighted and had gathered on the road where they were joined by people from the village who came to render assistance.

When appellants' bus pushed its way through this crowd faster than expected, two of the persons on the road called out to the driver of appellants' bus to be more careful when going through a crowd, and to reduce his speed ; or words to that effect. Apparently the manner in which these remarks were made, irritated the driver of appellants' bus, and perhaps also some of his passengers, as after clearing the crowd, the driver stopped his vehicle, came off and approaching the man who had made the remarks, slapped him on the face, saying that he is not the man to order him about in that manner.

This made the other appellants get out of their bus and so go to the assistance of their driver and friend ; and the incident soon developed into a commotion where blows and other assaults fell indiscriminately on men and women at random, coming, according to the prosecution, mostly from the appellants. The scene lasted for several minutes. After this attack, the appellants returned to their bus, and proceeded on their way ; but at the next village they were stopped by the Police, who had in the meantime arrived at the scene and had instructed the next Station to intercept the bus of the appellants.

The result of the Police investigation in this incident was a prosecution against the five appellants on a charge-sheet containing the counts described earlier in this judgment ; four counts for assaulting different women, six for other assaults, and one for public disturbance. All five appellants were jointly charged on all these counts ; and no distinction was made between them as to the role each of them played in the incident.

On the face of it, this presents a picture where detail lacks, and the whole matter looks as one of general impression rather than an accurate presentation of the facts. It would seem strange that all five attackers assaulted all ten complainants in the same way ; and before any of the crowd had time to do anything about it, they all returned to their bus and went off.

Be that as it may, however, learned counsel for the appellants apparently advised a general plea of guilty as in the circumstances, undoubtedly the appellants were accomplices in each of the assaults, none of which was of a serious nature. Wisely, in our opinion, counsel must have thought that the less said and heard about the incident, the better for his clients. Offering a full apology on their behalf, coupled with a repenting plea of guilty, and explaining his clients' conduct by their hurry to reach their village before dark, counsel apparently thought that this was a case of an ordinary common assault, after provocation, which called for a sentence of a small fine.

The trial Judge, however, took a different view of the case. He considered this as a " mass assault on innocent people, including women " in need of assistance, as he says in his note. And treating the provocation from the crowd, as the result of accused's own lack of understanding while driving through a crowd, the trial Judge thought that such a provocation in no way justified appellants action. And, taking the view that the appellants must learn to respect the law " and their fellow men, especially when the latter are in need of help ", he passed the sentence described earlier in this judgment, with the object of protecting the public by its deterrent effect.

In presenting appellants' case before us, learned counsel submitted that even on the basis on which the trial Judge placed his decision, this was a case of a fine, and not one for imprisonment, considering the usual sentences in cases of minor assaults, in the District Court of Nicosia. Unfortunately, however, learned counsel could not refer us to any particular case, with more or less similar circumstances.

Counsel appearing for the prosecution submitted that the sentence imposed was " rather lenient ". But he, likewise, could not refer to any previous particular case.

The approach of this Court in appeals against sentence was stated in a number of cases. The Court of Appeal will only interfere with a sentence imposed by the trial Court, 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 punishment, allowed itself to be influenced by matter which should not affect the sentence. Or, else, if the sentence imposed is manifestly excessive in the circumstances ; or manifestly inadequate. (See *Nicolaou* v. *The Republic* (1966) 2 C.L.R.

60 at p. 61 ; *Michael Afxenti "Iroas"* v. *The Republic* (1966) 2 C.L.R. 116 at p. 118 ; also, *The Attorney-General* v. *Vasiliotis and Another* (reported in this part at p. 20 *ante*).

As to the suitability of imprisonment in a sentence, the matter was also discussed in previous cases, one of which is *Panayiotis Mirachis* v. *The Police* (1965) 2 C.L.R. 28 at p. 32. That was a case where a mechanic, aged 28, was sentenced to four months imprisonment coupled with a disqualification order for two years, for careless driving and speeding, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332.

> "When all other alternatives are considered unsuitable to meet the particular case in hand, the Court may well have to resort to imprisonment—it was said there. But in such a case, the sentence has to be justified upon one of the purposes to be served by such a sentence. Rehabilitation, mainly in the interest of the offender ; deterrence, mainly in the public interest and protection ; retribution, in the proper enforcement of the law ; all these matters have to be considered and weighed, together with the consequences and probable effect of imprisonment on the particular offender ".

In the circumstances of this case, we have to find sufficient legal justification for interfering with the sentence imposed by the trial Judge. The ground on which the sentence is attacked, is that the term of two months is manifestly excessive, in the circumstances. Giving the matter our best consideration, we were not able to arrive at this conclusion, excepting for the case of appellant No. 4. There, a labourer of 54, without previous convictions, the elderly man we see now before us, could hardly, we think, have played the same role in the attack as the other four accused, so much younger in age.

Taking all the material before us into consideration we arrived at the conclusion that the appeals of the four appellants 1, 2, 3 and 5 fail and must be dismissed. With directions, however, that the sentence imposed shall run from the date of conviction. In the case of appellant No. 4 (Charalambos Philippou) the appeal is allowed, and the sentence, will be reduced to one month's imprisonment from conviction, on each count, to run concurrently. Order accordingly.

Appeals of appellants 1, 2, 3 *and* 5 *dismissed. Appeal of appellant* 4 *allowed.*