NICOS A. FELEKKIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3015)

Criminal Law—Sentence—Appeal against sentence—Sentence of two years imprisonment for abduction contrary to section 148 *of the Criminal Code, Cap.* 154 *and concurrent sentence of eighteen months' imprisonment for the lesser offence of indecent assault contrary to section* 151 *of the Criminal Code—Sentence reduced to a term of one year imprisonment.*

Criminal Law—Concurrent sentences—Conviction on two counts arising out of the same set of facts—Concurrent sentence on the lesser count set aside, the case being amply covered by the sentence on the more serious count.

Sentence—Appeal—Concurrent sentences—See above.

Criminal Procedure—Appeal—Further evidence—Power to receive further evidence on appeal—Principles upon which the Appellate Court will act in the matter—The Courts of Justice Law, 1960 (*Law of the Republic No.* 14 *of* 1960), *section* 25 (3).

Fresh or further evidence on appeal—See above.

Evidence—Further evidence on appeal—See above.

Abduction—See above under Criminal Law.

Indecent assault—See above under Criminal Law.

Criminal Procedure—Appeal—Notice of appeal—Amendment—Extension of time to lodge an appeal—Application for leave to amend a notice of appeal against sentence by introducing an appeal against conviction as well—Application made long after the expiry of the prescribed period of ten days under section 133 (3) *of the Criminal Procedure Law, Cap.* 155—*To enable now the appellant to amend his notice of appeal so as to include also an appeal against conviction, would amount to extending under section* 134 *of the statute the period for filing such an appeal—But this can only be done by making*

a proper application and for good cause shown for such extension—In any event such a proceeding two months after conviction would seem to be far too late in the day.

Amendment of notice of appeal—See above.

Appeal—Extension of time to appeal—See above.

Extension of time to lodge an appeal—Section 134 of the Criminal Procedure Law, Cap. 155—See above.

Time—Extension of time to appeal—See above.

Before hearing this appeal against sentence on its merits the Court dismissed two applications made by counsel for the appellant. The first application, based on section 25 (3) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960), was for leave to adduce further evidence ; the second was for leave to amend the notice of appeal against sentence so as to introduce also an appeal against conviction.

Held, as to the first application regarding further evidence :

The statutory power of this Court under section 25 (3) of the Courts of Justice Law, 1960, was never intended to relieve the parties in civil or criminal proceedings from the duty of placing before the trial Court all available relevant evidence (see *Yiannakis Kyriacou Pourikkos* (2) v. *Mehmet Fevzi*, 1962 C.L.R. 283, at p. 288; *Periclis Ioannou Kolias* v. *The Police* (1963) 1 C.L.R. 52, at p. 56).

Application refused.

Held, as to the application for leave to amend the notice of appeal :

(1) The notice of appeal filed by the appellant within the prescribed period of ten days under section 133 (3) of the Criminal Procedure Law, Cap. 155, is clearly an appeal against sentence only. To enable the appellant to amend his notice by introducing at this stage an appeal against conviction as well, would amount to extending under section 134 of the statute the period for filing such an appeal.

(2) We have no such application before us ; and in any case, such a proceeding two months after conviction would seem to be far too late in the day, and could only be taken for good cause shown for such extension (see *The Attorney-General* v. *Petros Demetriou HjiConstanti*, reported in this Part at p. 113 *ante*).

Application refused.

This is an appeal against sentences of two years' and eighteen months' imprisonment, respectively, imposed on the appellant by the trial Court, the first for abduction contrary to section 148 of the Criminal Code, Cap. 154, the second (concurrently) for indecent assault on a female contrary to section 151 of the Code. Abduction is a very serious offence punishable with imprisonment not exceeding seven years' imprisonment, whereas indecent assault is a misdemeanour punishable with imprisonment not exceeding two years, or with a fine not exceeding one hundred pounds, or with both. In the circumstances of this case it would seem that the offence of abduction was a borderline case amounting in substance and effect to a case of a serious indecent assault. Allowing the appeal and reducing the sentence to one years' imprisonment from the date of conviction, the Court :

Held, (1) we accept counsel's submission that on the facts of this case the offence charged on the first count (viz. abduction) must be treated as a borderline case amounting in substance to a case of a serious indecent assault, fully covered by the second count, preferred under section 151 of the Criminal Code (viz. for indecent assault on a female).

(2) We, therefore, allow the appeal and reduce the term to one year's imprisonment from the date of conviction.

(3) The conviction for indecent assault on the second count rests on the same set of facts ; and is amply covered by the conviction on the more serious count. We, therefore, set aside the concurrent sentence on the second count.

Appeal allowed ; sentence on count 1 *reduced to one year's imprisonment ; no sentence on count* 2.

Cases referred to :

Yiannakis Kyriacou Pourikkos (2) v. *Mehmet Fevzi*, 1962 C.L.R. 283, at p. 288 ;

Periclis Ioannou Kolias v. *The Police* (1963) 1 C.L.R. 52, at p. 56 ;

The Attorney-General v. *Petros Demetriou HjiConstanti* (reported in this Part at p. 113 *ante*).

Appeal against conviction and sentence.

Appeal against conviction and sentence by Nicos A. Felekkis who was convicted on the 30th July, 1968 at the

District Court of Nicosia (Criminal Case No. 3708/68) on 2 counts of the offences of abduction and indecent assault on a female contrary to sections 148 and 151 and 35 of the Criminal Code Cap. 154, respectively , and was sentenced by Ioannides Ag. P.D.C. to 2 years' imprisonment on the abduction count and to 1 1/2 years' imprisonment on the indecent assault count, the sentences to run concurrently.

A. Vassiliou, (*Mrs.*), for the appellant.

M. Kyprianou, counsel of the Republic, for the respondents.

The following ruling was delivered by :

VASSILIADES, P. : At this early stage in the appeal, we have to deal with two applications filed on behalf of the appellant shortly before the hearing. The first is to move the Court to call and examine at this stage, two medical witnesses, named in the application, a psychologist and one of the prison doctors. The second is for leave to amend the grounds of appeal.

The first application is made under section 25 (3) of the Courts of Justice Law, 1960, (14 of 1960) which enables this Court to hear or receive further evidence in dealing with an appeal. The reason for which the appellant proposes to have these two witnesses called—as stated in the application—is to enable this Court " to evaluate fully the nature and extent of the appellant's psychological condition ; " presumably his condition at the time of the commission of the offence.

The power of the Court under section 25 (3) to receive further evidence, was considered in a number of cases in one of which the view was taken that " this statutory provision was never intended to relieve the plaintiff at trial from the duty of placing before the Court all available relevant evidence." (*Yiannakis Kyriacou Pourikkos* (2) v. *Mehmet Fevzi* 1962 C.L.R. page 283 at page 288). We would take the same view in the case of a party in a criminal proceeding. We would also refer in this connection, to *Periclis Ioannou Kolias* v. *The Police* (1963) 1 C.L.R. page 52 at page 56.

What could be relevant regarding the guilt of the appellant, is the condition of his mind at the time of the offence. If any medical evidence could help the Court " to evaluate the nature and extent of appellant's psychological condition " at the time, such evidence should be called at the trial. The offence was committed on February 12, 1968 ; proceed-

ings were taken in the same month ; the appellant was charged before the Court on June 6, 1968 ; and was tried on July 17, 1968. A report of the psychologist, whom the appellant proposes to call at this stage, dated July 25, 1968, is on the record, and it states that the psychologist in question, examined the appellant on June 7 and 8, 1968. If his evidence were at all useful, he should have been called at the trial. And we do not think that the evidence of the prison doctor, who first examined the appellant after his conviction, can now be admitted at this stage, in connection with appellant's guilt.

The application for the hearing of further evidence regarding appellant's psychological condition at the time of the offence, is, therefore, refused.

We now come to the second application for the amendment of the notice of appeal. This consists of two parts : Part (A) against conviction ; and Part (B) against sentence. The notice filed by the appellant within the prescribed period under section 133 (3) of the Criminal Procedure Law (Cap. 155) *i.e.* within ten days of the date upon which sentence was pronounced, is clearly an appeal against sentence only. To enable the appellant to amend his notice by introducing at this stage an appeal against conviction as well, would amount to extending under section 134, the period for filing such an appeal. We have no such application before us ; and in any case, such a proceeding two months after conviction would seem to be far too late in the day, and could only be taken for good cause shown for such extension. We would refer in this connection, to an application for extension of time for the filing of an appeal in the case of *The Attorney-General* v. *Petros Demetriou HjiConstanti,* (reported in this Part at p. 113 *ante*) ; and we would refuse this part of the application.

What is left is the appeal against sentence which should proceed on the grounds stated in the notice. As, however, the notice before us was prepared without legal assistance, we propose to hear in the interests of justice in this case, learned counsel for the appellant on all the grounds which she now wishes to put forward against sentence, as presented in her application for amendment of the part of the notice concerning sentence. The case is adjourned to the 13th November, 1968, to give time for medical observation of the appellant while in prison, which his advocate apparently thinks, may be useful for the purposes of the appeal against sentence.

Applications refused.

1968
Sept. 27,
Nov. 13

—

NICOS A. FELEKKIS
v.
THE POLICE

The following judgment was delivered on November 13, 1968, by :

VASSILIADES, P. : On September, 27, 1968, we disposed of the two applications filed on behalf of the appellant in connection with this appeal ; one, was for the hearing of further evidence under section 25 (3) of the Courts of Justice Law, 1960 ; and the other, was for leave to amend the notice of appeal in such a manner as to make the appeal originally taken against sentence only, to have the effect of an appeal against conviction and sentence. For the reasons stated in our decision of that date, both applications were refused.

What was left after that, was the appeal in the original notice which we said that we would hear today, some seven weeks later, to give time for medical observation of the appellant while in prison, which his advocate apparently thought that it might prove useful for the purposes of the appeal against sentence.

Apparently nothing much came out from such observation on the medical aspect of the case ; and learned counsel argued the appeal on the ground that the sentence of two years imprisonment for abduction and 18 months for indecent assault, imposed by the trial Court, was, in the circumstances in which the offence was committed, and in the circumstances pertaining to the offender, manifestly excessive.

Unfortunately the record does not show the reasons for which the trial Judge assessed the sentence at that level. The record, in that connection, merely reads :

> " Accused to go to prison for two years on count 1 ; 1 1/2 years on count 2. Sentences to run concurrently ; No sentence on count 3."

Attached to the record, however, there is a note by the stenographer, which, as far as material, reads :

> " Also, in passing sentence, the Judge gave at length reasons in Greek, but they were not translated into English for the purpose of my recording them down, nor was any summary of them dictated to me either prior of afterwards."

Counsel for the appellant complained that on such scarce material the correctness of the sentence, could hardly be discussed. The reasons for it, were not stated; and one had to look for them in the record before the court. We think the complaint is justified.

The circumstances in which the offences charged, were committed, as given by the prosecuting police officer after appellant's plea of guilty, are, shortly, these :— At about 6 o'clock in the evening of February, 12, 1968, the appellant, a young man of 23, noticed a girl of the age of 18 walking with another young man towards her house. When the couple parted and the girl continued on her way alone, the appellant approached her, told her that he was a policeman and asked to her to follow him if she did not want to have trouble with her home for her relations with " that young man ". The girl, under the influence of fear, followed him. It was already getting dark, and they were at a lonely spot about 80 yards from the girl's house. The appellant, still pretending that he was a policeman in civilian clothes, asked for the girl's name, school and other particulars ; and when the girl got impatient and said that she would now be going home, the appellant tried to kiss her. She resisted ; he forced her to the ground ; and indecently assaulted her. The opening of a window at a block of flats nearby, and the girl's continued resistance, made appellant move off in a hurry. The girl informed her people, who reported the matter to the police on the same evening. The appellant was suspected ; was identified by the girl, and thereupon, he admitted.

His defence was a plea of mitigation. The advocate who was then handling his case, pleaded appellant's immature age, and tried to rely on certain " psychological difficulties " described in a clinical psychologist's report presenting the appellant as a highly intelligent person, suffering from a " polymorphous psychosexual inversion ", which, it was suggested, explained appellant's behaviour at the material time. A previous conviction for a minor larceny, found in appellant's police record, was also attributed to his sexual difficulties ; and his advocate appealed for a " corrective therapy rather than punishment ".

The trial Judge imposed the sentences already stated ; but his reasons for doing so, do not appear on the record. Appellant's new counsel had to surmise them for the purposes of her argument ; and we find ourselves much in the same difficulty.

Abduction is a serious crime, punishable under section 148 of the Criminal Code (Cap. 154) with seven years' imprisonment. Bound by appellant's plea at the trial court, learned counsel could not challenge the conviction on the first count ; but submitted with persuasive force, that on the facts, this must be treated as a borderline case ; perhaps put by the plea on the wrong side of the border. In

substance, this is definitely a case of a serious indecent assault, counsel argued ; the offence charged, and fully covered by the second count, preferred under section 151 of the Code. And suggested that apparently this is the reason for which the Attorney-General made use of his powers under section 155 of the Criminal Procedure Law (Cap. 155) directing a summary trial.

We think there is merit in this submission ; and we accept it. Indecent assault on a female (the offence charged in count 2) is a misdemeanour punishable with imprisonment not exceeding two years, or with a fine not exceeding one hundred pounds, or with both such punishments. As we have already said, we consider this a serious assault. And we find no mitigating circumstances in the medical report filed on behalf of the appellant, or in the social investigation report, which would justify any sentence other than imprisonment. Any one knowing the conditions under which a young man of the age of the appellant would serve such a sentence in the prisons of the Republic, would feel sure, as we do, that there, he will have every opportunity to receive the care and treatment of the medical, the psychological, and the social services of the prison authority, if he wishes to have such treatment.

We now come to the length of the period of imprisonment. For a borderline case of abduction, committed in the circumstances of this case, without any suggestion of prevalence, we consider that a term of two years' imprisonment, is manifestly excessive. As we have already said earlier in this judgment, we do not know the reasons for which the learned trial Judge imposed it, beyond what may be found in the facts on record. On the material before us we decided, not without some difficulty, to allow the appeal against sentence, and reduce the term to one year imprisonment on the first count. The conviction for indecent assault on the second count rests on the same set of facts ; and is amply covered by the conviction on the more serious count. We therefore, propose to set aside the concurrent sentence on the second count.

In the result, the appeal is allowed ; and the period of imprisonment is reduced to one year on the first count ; no sentence on count two. The sentence to run from the date of conviction.

Order accordingly.

Appeal allowed ; sentence on count 1 *reduced to one year's imprisonment ; no sentence on count* 2.