MICHAEL HJI PANAYI KOUGKAS AND OTHERS,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeal Nos.* 3020–3026)

Gambling—Permitting premises to be used as a gaming house—Keeping watch in order to warn gamblers against detection—The Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, *sections:* 4, 3 (1) (*b*) *and* 11 (*b*)—*Findings of fact—Appellate Court not persuaded that the trial Court's findings are unsatisfactory—Therefore, appeal against conviction fails—Sentence—Sentence imposed not excessive.*

Criminal Law—Sentence—Primary responsibility for measuring sentence rests with the trial Court—Grounds on which the Appellate Court will interfere with sentences imposed.

Sentence—Appeal—Appeal against sentence—Principles and grounds upon which the Appellate Court will interfere with sentences imposed—See, also, above under Criminal Law.

Appeal—Appeal against sentence—See above.

Sentence—Primary responsibility for measuring sentence rests with the trial Courts—See, also, above under Criminal Law.

Observations by the Court as to the powers of, and the use thereof by the Police to seize money or other things connected with the commission of an offence as exhibits for the purpose of prosecution.

After reviewing the facts and in dismissing these appeals against conviction and sentence, the Court :

Held, (1). We have not been persuaded that the trial Court's findings are in any way unsatisfactory ; or that they should

be set aside for any other reason (*Koumbaris* v. *The Republic* (1967) 2 C.L.R. 1, at p. 9; *Paspallis* v. *The Police* (reported in this Part at p. 108 *ante*).

(2) As regards sentence, it can hardly be suggested that the fines imposed by the trial Judge were unduly severe. The primary responsibility for measuring sentence rests with the trial Court; and this Court will not intervene unless there are sufficient reasons for doing so (see *Michael Afxenti Iroas* v. *The Republic* (1966) 2 C.L.R. 116; *Karaviotis and others* v. *The Police* (1967) 2 C.L.R. 286).

Appeals dismissed.

Per Curiam: Sums of money found in the appellants' pockets when they were searched after the raid, were kept by the police for several months pending trial, together with the playing cards, a table and ten chairs also seized after the raid. In this particular case, nowhere in the judgment of the trial Court does it appear that the case for the prosecution rested on the production of the actual money or the articles seized as exhibits and the Judge's direction, immediately after conviction, for their return speaks for itself. We should like to draw attention to the fact that the power of the police to seize money or other things connected with the commission of an offence as exhibits for the purpose of prosecution and, also, as things which the trial Court might order to be forfeited under section 15 of the statute, Cap. 151 (*supra*), is a statutory power which must be properly and legally exercised; for its abuse is subject to judicial control. We have no doubt that the lawyers at the office of the Attorney-General will inquire into the complaints made in this respect by Counsel for the appellants.

Cases referred to:

Koumbaris v. *The Republic* (1967) 2 C.L.R. 1 at p. 9;

Paspallis v. *The Police* (reported in this Part at p. 108 *ante*).

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

Karaviotis and others v. *The Police* (1967) 2 C.L.R. 286;

Michael HadjiPanayi Kougkas and another v. *The Police*, 19 C.L.R. 59;

Police v. *Loizos Christodoulou and others*, 19 C.L.R. 97.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Michael Hji Panayi Kougkas and six others who were convicted on the 10th August, 1968 at the District Court of Famagusta (Criminal Case No. 1674/68) on three counts of offences contrary to sections 4, 14, 15, 3 (1) and 11 (*b*) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 and were sentenced by S. Demetriou, D.J., to sentences of fine ranging from £10 to £20.

A. Emilianides, for the appellants.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P.: These seven appeals arise from the same case. All the appellants were convicted in the District Court of Famagusta in case No. 1674/68 on charges connected with gambling, preferred by the Police under the provisions of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151. They have all received sentences of fine.

The first appellant, described in the charge as a club-keeper (53 years of age) was charged jointly with appellants Nos. 2, 3, 4 and 5, for gambling at the game of cards known as "poka", contrary to section 4 of the statute. He (the first appellant) was also charged jointly with appellant No. 6 (who was described as the first appellant's partner in the club business) for permitting their club premises to be used as a gaming house, contrary to section 3 (1) (*b*) of the statute. And appellant No. 7 was charged for keeping watch in order to warn the other offenders against detection, contrary to section 11 (*b*). All appeals are taken both against conviction and sentence.

Before going any further with the matter, let me say at once, that learned counsel for the police (the respondents in this appeal) has conceded that the fine of £15 imposed on appellant No. 6 (Kyriakos Efthymiou) on the first count (for gambling) is apparently the result of an error, as this appellant was neither charged nor convicted on the first count. He was only charged on the second count (for permitting gambling on the club-premises) and was convicted accordingly. His appeal must therefore be partly allowed ; and the sentence imposed on him on the first count must be set aside. The error is obvious on the face of the record.

The facts of the case present no difficulty whatever. In the early hours of January 20, 1968, at about 4.30 a.m the police raided the club premises known as Alasia Club, in Famagusta and found appellant No. 7 keeping watch at the glass-door entrance, overlooking the staircase ; and on entering the premises, they almost caught red-handed the five appellants charged on the first count, engaged at the game of "poka". There was the commotion which usually takes place on such occasions ; and two persons who had been there for considerable time before the raid, gave evidence for the prosecution of what was going on in their presence, before the police arrived. Upon that evidence, which the trial Judge accepted, finding it amply supported by the other material before him (which he carefully considered in his judgment) the Judge made his findings ; and convicted the appellants as charged.

Learned counsel for the appellants strenuously attacked the evidence upon which his clients were convicted ; but having heard him exhaustively, we have not been persuaded that the trial Court's findings are in any way unsatisfactory ; or that they should be set aside for any other reason. (*Koumbaris* v. *The Republic* (1967) 2 C.L.R. 1 at p. 9 ; *Paspallis* v. *The Police* (reported in this Part at p. 108 *ante*).

As regards sentence, it can hardly be suggested that the fines imposed by the trial Judge are unduly severe. Indeed one may think the opposite in the case of appellants with several previous convictions. But the primary responsibility for measuring sentence, rests with the trial Court ; and this Court will not intervene unless there are sufficient reasons for doing so. (See *Michael Afxenti Iroas* v. *The Republic* (1966) 2 C.L.R. 116 ; *Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286. We do not find it necessary to intervene in this case.

Before concluding, however, we think that we should deal shortly with the complaint made by counsel on behalf of the appellants that sums of money found in their pockets when they were searched after the raid, were kept by the police for several months pending trial, together with the playing cards, a table and ten chairs also seized after the raid. Learned counsel for the police explained that the articles in question, as well as the money, were seized as exhibits ; and also as things which the Court might be of opinion that they were intended to be used in connection with the offence ; and order their forfeiture under section 15 of the statute.

The matter does not really arise in this appeal, as the trial Judge in fact directed that they should all (articles and money) be returned to the appellants ; and they were actually returned immediately after conviction. We should like, however, to draw attention to the fact that the power of the police to seize money or other things connected with the commission of an offence as exhibits for the purposes of prosecution, is a statutory power which must be properly and legally exercised ; for its abuse is subject to judicial control. In this particular case, nowhere in the judgment of the trial Court does it appear that the case for the prosecution rested on the production of the actual money or the articles seized as exhibits ; and the judge's direction for their return speaks for itself. We have no doubt that the lawyers at the office of the Attorney-General will investigate into the complaints.

Subject to the correction of the error regarding the case of appellant No. 6, I would dismiss the appeals.

STAVRINIDES, J.: I agree and have nothing to add.

HADJIANASTASSIOU, J.: I am in agreement with the reasoning and the conclusions reached by the learned President of this court in the judgment just delivered. I would like, however, to elaborate on one point only.

Counsel for the appellants relying on the authority of *Michael Hadjipanayi Kougkas and Another* v. *The Police*, 19 C.L.R. 59, has contended that as there was no evidence before the trial Court to show that the club premises were used for gambling on one occasion prior to this occasion the subject-matter of the charge, he has invited the court to take the view that the charge against accused Nos. 1 and 6 under the provisions of section 3 (1) (*b*) of Cap. 151 has not been proved.

With due respect to counsel's argument, I hold a different view. A gaming house is defined in section 2 of the Betting Houses, Gaming Houses and Gambling Prevention Law, to include any place kept or used for gambling and a place shall be deemed to be used for gambling if it is used for gambling even on one occasion only.

In my view, the material words in this section " even on one occasion only " are plain and unambiguous words and should be construed to mean that the prosecution in order

to establish that a house has been used on one occasion only it is sufficient to prove gambling on the occasion, the subject-matter of the charge. In the light of the findings of the trial Court that the club premises were used for gambling by the accused for playing the game of " poka ", I would dismiss this contention of counsel. See on this point the *Police* v. *Loizos Christodoulou and Others*, 19 C.L.R. 97, distinguishing the case of *Kougkas and Another* (supra).

I would, therefore, dismiss the appeals.

VASSILIADES, P.: In the result, the appeals are dismissed excepting for that of appellant No. 6 for the £15 fine on count one, which fine is set aside ; all other convictions and fines, affirmed.

Order accordingly.