

1968  
Dec. 20

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ANTONIOS  
SAVVA  
v.  
THE REPUBLIC

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

ANTONIOS SAVVA,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

(Criminal Appeal No. 3051)

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*Criminal Law—Sentence—Appeal by the offender against sentence of five years' imprisonment for robbery with violence contrary to sections 282 and 283 of the Criminal Code, Cap. 154, on the ground that it is excessive—Sentence increased by the Appellate Court to a sentence of eight years' imprisonment—Criminal Procedure Law, Cap. 155, section 145 (2)—Appellant a recidivist—See, also, below.*

*Sentence—Discretionary power and responsibility of the Court in measuring sentence—Principles, criteria and factors to be considered—Inter alia, individual offender's criminal record—Also, the nature and organization of the prison where the convict will serve sentence—Institutional treatment.*

*Sentence—Appeal against sentence by the offender—Sentence increased under the powers of the Court of Appeal under section 145 (2) of the Criminal Procedure Law, Cap. 155—See, also, above under Criminal Law.*

*Criminal Procedure—Appeal—Sentence—Sentence increased on an appeal by the offender under section 145 (2) of Cap. 155 (supra)—See, also, above under Criminal Law.*

*Robbery with violence contrary to sections 282 and 283 of the Criminal Code, Cap. 154—Sentence—See above under Criminal Law.*

This is an appeal by the offender against a sentence of five years' imprisonment imposed on him by the Assize Court of Nicosia for robbery with violence contrary to sections 282 and 283 of the Criminal Code, Cap. 154. The appeal was taken by the appellant in person on the ground that the sentence is excessive. The Court, exercising its powers under section 145 (2) of the Criminal Procedure Law, Cap.

155 after taking into consideration the various factors bearing on sentencing, increased the sentence to one of eight years' imprisonment to run from the date of the dismissal of the appeal.

*Appeal dismissed. Sentence increased as above.*

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Cases referred to :

*Charalambos Tryfona alias Aloupos v. The Republic*, 1961  
C.L.R. 246.

The facts sufficiently appear in the judgment of the Court.

### **Appeal against sentence.**

Appeal against sentence by Antonios Savva who was convicted on the 30th. October, 1968, at the Assize Court of Nicosia (Criminal Case No. 16230/68) on one count of the offence of robbery contrary to sections 282 and 283 of the Criminal Code, Cap. 154, and was sentenced by Loizou, P.D.C., Stavrinakis and Vakis, D.JJ. to five years' imprisonment.

*The appellant*, appearing in person.

*M. Kyprianou*, counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :

VASSILIADES, P.: This is an appeal against a sentence of five years' imprisonment, imposed on the appellant by the Assize Court of Nicosia for robbery with violence contrary to sections 282 and 283 of the Criminal Code (Cap. 154). The appeal was taken by the appellant in person, on the ground that the sentence is excessive.

We found no substance whatsoever in appellant's protestations and complaints against the sentence of the trial Court. His case is that he was put up by another person to commit the crime and therefore, he is not to blame.

After hearing the appellant, we called on counsel for the Republic, on the adequacy of the sentence. His submission was that, in the circumstances, the sentence imposed is manifestly inadequate ; and should be increased in exercise of the Court's powers under section 145 (2) of the Criminal Procedure Law (Cap. 155).

The punishment provided by the Criminal Code for the crime of robbery is 14 years' imprisonment ; and if committed with the use of violence against a person (or in certain other aggravating circumstances described in section 283) the punishment is imprisonment for life This is sufficient to indicate the seriousness of the crime in the eyes of the legislature ; and in a way reflects the public view on the matter and the general abhorrence for this crime

The circumstances in which the robbery under consideration, was committed appear in the judgment of the trial Court. For the purposes of sentence, they are shortly summarised as follows :

“ The facts relating to the charge have been elaborately set out before the Court and we shall not go into their details. Suffice it to say that the accused, a robust man, entered into the house where he knew there would be a lonely middle-aged woman and committed the offence therein by using violence on her when she confronted him. The degree of violence used upon this poor victim was considerable and in addition he used threatening words causing to her terror ”

Regarding the type and character of the offender the trial Court say :

“ His record shows that he is prone to have no respect for other people's homes and person and the element of sexuality is predominant in most of his deeds We had the advantage of hearing the findings of Dr. Drimiotis, a Mental Specialist, who recently examined the accused. The doctor described him as a person of psychopathic personality with urges for sexual acts, sexual deviations and his inhibitory powers and ego control are markedly diminished His judgment is fair, he is aware of his actions and their consequences, yet he cannot control his deeds because of his urges.”

And further down, the trial Court add :

“A glance at the criminal record of the accused would have been enough to give us a clear picture of his personality with its violent character and sexual propensities. The recidivism apparent from his record is such as to put us on our guard in meeting out to him the appropriate sentence.”

Indeed, the appellant has a criminal record running over a period of 34 years. During the last 15 years he was convicted, *inter alia*, for rape, and sentenced to seven years imprisonment ; for indecent assault, three years' imprisonment ; trespass with intent to annoy, one year ; and five other convictions.

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In these circumstances we had no difficulty in accepting the submission that the sentence of five years' imprisonment for the robbery in the present case is manifestly inadequate.

The responsibility of a court in measuring and imposing sentence has been described as immense both to the community and the defendant. The wide discretionary powers vested in the Courts in this connection make that responsibility all the heavier. The need to deter or reform the offender must be weighed together with the equally important need to protect society and to deter potential offenders. The principle that a judge in considering sentence in a particular case should pay due attention to the individual offender's criminal record and should take that into serious consideration, is well established in the criminal law and widely accepted in judicial practice.

Sentencing has been the subject of endless academic discussion and continuous experimental study on the part of a great number of judges in different times. Together with the accepted main criteria, there is a variety of factors which weigh in the mind and conscience of the judge in forming his decision as to sentence ; including factors peculiar to different times and different places. The nature and organization of the prison where the convict will serve a sentence of imprisonment, is one of such factors. In Cyprus after the establishment of the Republic, the matter was considered in the case of *Charalambos Tryfona, alias Aloupos v. The Republic*, 1961 C.L.R. p. 246, where the views of this Court on sentencing were shortly but clearly reflected. Since then the Courts have continuously had to do their best in making use of the means or instrument of sentence in the proper application of the law, in the public interest.

As we have already said, we had no difficulty in coming to the conclusion that the sentence imposed in this case was inadequate and should be substituted by the appropriate sentence. But what is the appropriate sentence in the circumstances of this case, has given us great difficulty. In delivering the judgment of the Court I do not propose dis-

cussing the different views considered ; nor do I think that I should go further than say that it was with great difficulty that the Court agreed on a sentence of eight years' imprisonment. We hope that this will give to the Prison Medical and Psychiatric Services sufficient opportunity to help this unfortunate man ; and also to help the Court, if need be, in future, with a full report of what has been done for him.

That the appellant is a misfit in the law-abiding community there can be no doubt ; that previous sentences and the treatment provided thereby, have not been sufficiently effective is, we think, equally certain. In prison the appellant, under the necessary compulsion, leads a disciplined life which gives him the opportunity to avail himself of the institutional services and also to make himself useful by doing such work as he is physically and mentally able to do. When he comes out of prison it is, we think, very doubtful, in view of his past, whether he will be able to keep out of mischief. If in future other persons will have the misfortune of becoming victims of appellant's violent character and criminal propensities, let us hope that the Court dealing with the matter in the light of this experience, will impose a more appropriate sentence in the interest of both the community and the offender ; unless in the meantime the appellant be found to be a mental case and a proper subject for confinement in the appropriate institution.

As matters now stand, exercising our powers under section 145 (2) of the Criminal Procedure Law, Cap. 155, we determine this appeal by increasing the sentence to one of eight years' imprisonment from today. There will be judgment and order accordingly.

*Appeal dismissed ; sentence increased as above.*