1969
June 28

GEORGHIOS YIASOUMIS NICOLAOU
v.
THE POLICE

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

GEORGHIOS YIASOUMIS NICOLAOU,
Appellant,

v.

THE POLICE,
Respondents.

(*Criminal Appeal No.* 3094).

Sentence—Sentence of nine months' imprisonment for possession of explosive substances (21 *rounds of ammunition*) *imposed by the trial Court—The explosive Substances Law, Cap.* 54 *section* 4(4) (*d*)*—Whereas the offender* (*a cadet officer in the National Guard*) *who gave said ammunition to appellant was merely bound over by the Military Court—Disparity of such sentences unsatisfactory and offensive to the common sense of justice—Sentence reduced solely on this ground—Although in ordinary circumstances the sentence of nine months' imprisonment imposed by the trial Court would rather appear lenient.*

Explosive Substances—Possession—Sentence—See above.

Criminal Law—Sentence—Disparity of sentences imposed on the appellant and on the offender who gave him the explosive substances (*ammunition* supra)*—Such disparity offends against the common sense of justice—Sentence of nine months' imprisonment imposed on appellant reduced on this ground—See, also, hereabove.*

The facts sufficiently appear in the judgment of the Court.

Appeal against sentence.

Appeal against sentence by Georghios Yiasoumi Nicolaou who was convicted on the 8th April, 1969, at the District Court of Famagusta (Criminal Case No. 7590/68) on one count of the offence of possessing explosive substances without a licence contrary to section 4(4) (*d*) of the Explosive Substances Law, Cap. 54 and was sentenced by S. Demetriou, D.J. to nine months' imprisonment.

The appellant, appeared in person.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The matter before us is an appeal against sentence. The appellant was convicted in the District Court of Famagusta for possessing explosive substances, *viz.* 21 rounds of ammunition without a licence from the Inspector of Explosives contrary to section 4(4) (*d*) of the Explosive Substances Law (Cap. 54). He pleaded guilty to this charge ; and was sentenced to nine months' imprisonment.

The trial Judge in dealing with sentence, observed that the offence was rather serious in view of the conditions now prevailing in the island and of the use, or the possible use, of such ammunition by unauthorized persons. The Judge took also into account that although the accused was only 22 years of age, he had several previous convictions. With that material before him, the trial Judge considered that the proper sentence would be a term of nine months' imprisonment.

Against this sentence the appellant took the present appeal by signing personally the form supplied to prisoners by the Prison Authorities soon after their admission. In the form, the appellant gives as reasons for his appeal that the sentence was, in the circumstances manifestly excessive.

In presenting his appeal without legal assistance, the appellant stated that the 21 rounds of ammunition which were found in his possession were handed over to him by a young Cadet Officer to take them to his (the Cadet Officer's) brother who is a Police Sergeant at Famagusta. This story is consistent with the statement he made when originally charged for this offence.

Answering a question from the Bench whether he knew what happened to the person who gave him the ammunition, the appellant said that, as far as he could say, the Cadet Officer was dealt with in the Military Court ; and was sentenced to two years' imprisonment with suspension, which in fact means that he is now out of the army and at large. In view of that statement and of the fact that the appellant was not legally represented, we adjourned this case for today to enable counsel for the respondents to make the necessary inquiries.

Learned counsel for the respondents informs us that the result of his investigation is that the person who gave to the appellant the ammunition, admitted doing so right

from the beginning ; but he denies that he gave it to be taken to his brother. His version is that he made a gift of this ammunition to the appellant. When the Cadet Officer was charged before the Military Court for stealing the ammunition by giving it away without authority to do so, while he was entrusted with its possession, the Cadet Officer admitted the charge ; but pleading his good conduct in the past and describing his action as frivolous, he appealed for leniency. Apparently his plea was supported by the officer conducting the prosecution ; and the Military Court, considering that a conviction at that stage of the Cadet's life, might have very heavy repercussions on his future, particularly in view of his intention to continue his studies in a university, imposed a most lenient sentence, binding over the person in question to come up for judgment within two years.

Asked whether in the circumstances the position does not appear to be rather irregular and unsatisfactory, learned counsel for the respondents submitted to this Court that the difference between the result of the case as far as the other person was concerned, and the result of the case as far as the appellant is concerned, can be explained by the previous conduct of these two persons. The Cadet Officer, learned counsel submitted, was a first offender, of very good character, who apparently attracted not only the leniency but also the sympathy of the Military Court which dealt with the case. On the other hand, this young man has a number of previous convictions, including one for the unauthorized possession of a rifle for which he was sentenced to one year's imprisonment. In these circumstances, counsel for the respondents submitted, the difference between the two sentences (the one in the hands of the Military Court and the one in the hands of the District Court) is not really as irregular or unsatisfactory, as it may appear to be.

We cannot accept this view of the matter. It is true that there is considerable difference in the past record of these two young men. On the other hand, their past is only an incidental matter in the case. The substance of the matter for adjudication lies in their respective conduct in the commission of the offence. We think that, in the circumstances, for the commission of the same offence (where, perhaps, the part played by the other person is even more blameworthy than the part played by the appellant now before us) the disparity in their respective sentences is unsatisfactory ; and is, we think, offensive to the common

sense of justice, so important to maintain in the minds and hearts of all people ; especially the people who exhibit a tendency to break the law. Unless they have faith and confidence that in the hands of the Courts they will meet with justice and receive the consequences of their conduct upon that footing, neither the sentences they receive can have the proper effect on their mind, nor can the courts be of much help to them in reforming their life.

We also have to bear in mind the principle of equality between all persons before the law which is generally accepted, but is not always apparent in every day life. If this young man and his family circle, as well as all those who may have taken an interest in his case, will look upon the matter intelligently, they will not be able to find the expected equality of treatment, in the case of these two young men. All these considerations have made this simple case (which in itself presents no difficulty whatsoever) a matter requiring special and exceptional treatment.

The sentence of nine months' imprisonment imposed on the appellant for the offence committed, seen apart of the case of the other person involved in the commission of the offence, cannot, we think, be described as manifestly excessive. We would not interfere with it on that ground alone. But considering all the circumstances of the case, including the disparity of the sentence imposed by the Military Court, we are of the opinion that the sentence imposed on the present appellant is wrong in principle.

We have to look on this matter in the light of the facts which are before us. These make it necessary for us to give this case an exceptional treatment. And this we do, in the hope that it will also give the opportunity to this young man to reconsider his attitude towards the law and strengthen his respect for it.

With all that in mind, we have come to the conclusion that the best we can do in this exceptional case, is to discharge the appellant from to-day ; considering that the part of the sentence which he has already served (some 2 1/2 months) is the appropriate sentence, in the circumstances ; and is sufficient for him to learn his lesson.

Be that as it may, we wish to stress two points :— Let nobody think that this Court would, in ordinary circumstances, consider a sentence of nine months' imprisonment for the unauthorized possession of 21 rounds of ammunition,

as manifestly excessive. If anything, this Court might be inclined to think that it is rather lenient. The other point is that we hope that the appellant will remember that if he comes again before the courts for any breach of the law, especially a breach of this nature, he may have to face a severe sentence.

In the result the appeal is allowed. The sentence is reduced to the period which appellant has already served in prison until to-day, so that he may be released forthwith. We order accordingly.

Appeal allowed.