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

LAMBROS LAZAROU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3108).

Sentence—Matters to be taken into consideration in measuring sentence—Sentence must fit the offence as well as the offender.

Sentence—Appeal—Approach of the Court of Appeal to appeals against sentence—Principles well settled.

Sentence—Appeal—Material particulars connected with the personal circumstances of the accused (now appellant) not put before trial Judge when considering sentence—No medical or social investigation report before the trial Judge—Obtained and admitted by the Court of Appeal by virtue of its powers under section 25(3) *of the Courts of Justice Law,* 1960 (*Law of the Republic No.* 14 *of* 1960)*—In the light of such reports sentence reduced.*

Appeal—Findings of fact made by trial Courts—Approach of the Court of Appeal—Principles applicable—Conviction based on such findings affirmed on appeal.

Criminal Law—Threatening violence, carrying arms to terrorize, common assault, public disturbance—Sections 91(*c*), 80, 242 *and* 95 *of the Criminal Code Cap.* 154, *respectively—Conviction and sentence—Appeal against both—See hereabove.*

Findings of fact made by trial Courts—Appeal—Approach of the Court of Appeal—See, also, hereabove.

Fresh evidence on appeal—Evidence affecting sentence—Medical and social investigation report regarding the personal circumstances of the accused (now appellant)—Not before the trial Judge—Obtained and admitted in the Court of Appeal under section 25(3) *of the Courts of Justice Law,* 1960.

Appeal—Fresh evidence—See hereabove passim.

This is an appeal both against conviction and sentence. The appellant was convicted on six counts ; and was sentenced to 18 months' imprisonment on the count for threatening

violence contrary to section 91(*c*) of the Criminal Code, Cap. 154 ; 12 months' imprisonment for carrying arms to terrorize contrary to section 80 of the Code ; and to lesser sentences for assault, public disturbance etc. It is common ground that the trial Judge did not have before him, for the purpose of assessing sentence, the social investigation report in connection with this case ; nor did he have before him the medical report regarding appellant's mental condition which was put forward as the reason for which he (appellant) was discharged from the army before the end of his national service (and which documents were produced and admitted by the Supreme Court under its powers under section 25(3) of the Courts of Justice Law 1960 (Law of the Republic No. 14 of 1960)).

Dismissing the appeal against conviction but allowing the appeal against sentence the Court—

Held, (*I*). *As regards the appeal against conviction :*

We have not been persuaded that there is sufficient reason for disturbing the findings of the trial Court upon which the convictions were based. This part of the appeal must therefore fail (see *Lambides* v. *The Police* (1967) 2 C.L.R. 142 ; *Christodoulides* v. *The Police* (1968) 2 C.L.R. 226).

Held (*II*). *As regards the appeal against sentence :*

(1) The approach of this Court to appeals against sentence was discussed in a number of cases. We may refer to *Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286 ; *Tsiolis* v. *The Police*, reported in this Part at p. 77 *ante*.

(2) In measuring sentence the Court must take into consideration the personal circumstances of the accused together with the circumstances in which he committed the offence. But in the instant case the trial Judge did not have before him the full picture of the appellant as seen in the light of the medical and the social investigation reports obtained and admitted here under section 25 (3) of the Courts of Justice Law, 1960. In the light of these reports we think that the sentence must be varied to fit the offence as well as the offender. In the end we reached the conclusion that a term of 9 months' imprisonment on each of the two principal counts (threatening and terrorizing under sections 91(*c*) and 80 of the Criminal Code, respectively *supra*) is the proper term in this case. All sentences to run concurrently as from the date of conviction.

Appeal against conviction dismissed. Appeal against sentence allowed. Order accordingly as above.

Cases referred to :

Lambides v. *The Police* (1967) 2 C.L.R. 142 ;

Christodoulides v. *The Police* (1968) 2 C.L.R. 226 ;

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

Tsiolis v. *The Police*, reported in this Part at p. 77 *ante*.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Lambros Lazarou who was convicted on the 30th June, 1969, at the District Court of Limassol (Criminal Case No. 5906/69) on five counts of the offences of, *inter alia*, carrying arms to terrorize and of threatening violence contrary to sections 80 and 91 (*c*), respectively, of the Criminal Code, Cap. 154, and was sentenced by Boyiadjis, D.J., to 12 months' imprisonment on the first count and to 18 months' imprisonment on the second count, the sentences to run concurrently.

L. N. Clerides, for the appellant.

S. Nicolaides, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant, a young man of 26 years of age, a pedlar dealing with old iron, was charged together with his father and mother in the District Court of Limassol, on a charge containing 14 various counts arising from an incident in a public street in the town of Limassol. The appellant attacked another man for an incident concerning his mother ; appellant's both parents joined in the attack. At a certain stage of the incident, the appellant used an iron axe to terrorise the other man whom all three accused assaulted, causing wilful damage to the taxi in which the other man tried to escape the attack ; and causing commotion and disturbance in the public street.

Eventually the appellant and both his parents were prosecuted together, upon a charge containing counts for carrying a weapon to terrorize ; threatening violence ; assaulting two different persons ; wilfully causing £45 damage to a car ; and public disturbance. All three accused pleaded not guilty, and after a strongly contested and exhaustive trial all three were convicted. They were sentenced on different counts to various terms of imprisonment.

The appellant before us (the son) was convicted on six counts ; and was sentenced to 18 months' imprisonment on the count for threatening ; 12 months' imprisonment on the count for terrorizing ; 9 months' imprisonment on two counts for assault ; and one month on the count for public disturbance ; all terms running concurrently.

The appellant challenges by his present appeal all his convictions and sentences. Learned counsel on his behalf went carefully and thoroughly into the circumstances in which the incident took place. Having heard him exhaustively, we have not been persuaded that there is sufficient reason for disturbing the findings of the trial court upon which the convictions were based. This part of the appeal must, therefore, fail. (See *Lambides* v. *The Police* (1967) 2 C.L.R. 142 ; *Georghios Nicola Christodoulides* v. *The Police* (1968) 2 C.L.R. 226).

As regards the part of the appeal against sentence, the trial Judge did not have before him for the purpose, the social investigation report in connection with this case ; nor did he have before him the medical report regarding appellant's mental condition, which was put forward as the reason for which he was discharged from the army before the end of his national service. Taking the view that investigation into these matters was necessary for the purposes of sentence, we adjourned the further hearing of the appeal to enable the preparation and filing of such reports. We now have them before us ; and their perusal leaves no doubt in our mind that if they were before the trial Judge they would influence his approach to the sentence.

We find it unnecessary to go into detail. We are in agreement with the trial Judge that the case calls for a rather severe sentence. But in measuring sentence, the Court must take into consideration the personal circumstances of the accused together with the circumstances in which he committed the offence for which he is being sentenced. Material particulars connected with the personal circumstances of the accused were not before the Judge when he was considering sentence in the case of this appellant. The approach of this Court in appeals against sentence was discussed in a number of cases. We may refer to *Diogenis Savva Karaviotis and Others* v. *The Police* (1967) 2 C.L.R. 286, followed in *Costi Hadji Savva Tsiolis* v. *The Police* (reported in this Part at p. 77 *ante*). We need not repeat the position.

In the instant case, the trial Judge did not have before him the full picture of the appellant as seen in the light of the medical and the social investigation reports, obtained and admitted here under section 25 (3) of the Courts of Justice Law (14 of 1960). In the light of these reports, we think that the sentence must be varied to fit the offence as well as the offender. The matter is not free of difficulty. We gave it anxious consideration. In the end we reached the conclusion that a term of 9 months' imprisonment on each of the two principal counts, for terrorizing under section 80 and for threatening under section 91 (*c*) of Cap. 154, is the proper term in this case. As the imprisonment on the counts for assault and on that for disturbance is concurrent, we do not think that we need interfere with the sentences imposed on those counts. And as the adjournments in the hearing of the appeal were found necessary, we agree with the submission made on behalf of the appellant that the sentence should be made to run from conviction.

In the result the appeal against conviction is dismissed ; the appeal against sentence is allowed to the extent of reducing the sentences imposed on the first and second counts to nine months' imprisonment on each count to run concurrently from conviction. The sentences imposed on the other counts are affirmed ; they also to run concurrently from conviction. Order accordingly.

Appeal allowed.