

1969
Mar. 4

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

MENELAOS
HAPSIDES
v.
THE POLICE

MENELAOS HAPSIDES,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3085*).

Criminal Law—Sentence—Deterrent effect—Matters to be considered in imposing sentence—Appeal—Appeal against sentence—Approach of the Court of Appeal in appeals against sentence—Principles settled in a number of cases—Primary responsibility in matters of sentence rests with the trial Courts—Sentence of three weeks' imprisonment for disorderly conduct contrary to the Criminal Code, Cap. 154, section 188(d)—Sentence sustained on appeal.

Criminal Procedure—Sentence—Appeal against sentence—Approach of the Court of Appeal—Date of commencement of sentence in unsuccessful appeals—Discouraging frivolous appeals—The Criminal Procedure Law, Cap. 155 section 147 (1)—See, also, supra.

Sentence—See above.

Appeal against sentence—See above.

The facts sufficiently appear in the judgment of the Court.

Cases referred to :

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

Kougkas v. The Police (1968) 2 C.L.R. 209 at p. 212 ;

Kyprianou v. The Police (1968) 2 C.L.R. 119 ;

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

Savva v. The Republic (1968) 2 C.L.R. 218 ;

Mitsios v. The Police (1968) 1 J.S.C. 44 ;

Lazarou v. The Police (reported in this Part at p. 55 ante).

Appeal against sentence.

Appeal against sentence by Menelaos Hapsides who was convicted on the 21st February, 1969, at the District Court of Nicosia on one count of the offence of disorderly conduct

contrary to section 188 (d) of the Criminal Code, Cap. 154, and was sentenced by Vakis, D.J., to 3 weeks' imprisonment.

L. N. Clerides, for the appellant.

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

1969
Mar. 4

—
MENELOS
HAPSIDES
v.
THE POLICE

The judgment of the Court was delivered by :—

VASSILIADES, P.: This is an appeal against a sentence of three weeks' imprisonment, imposed on the appellant by the District Court of Nicosia on February 21, 1969, for disorderly conduct in a public place likely to cause a breach of the peace, contrary to section 188 (d) of the Criminal Code, Cap. 154. The appeal is taken on two grounds : (a) that the sentence was measured on wrong principle ; and (b) that it is manifestly excessive, considering the special circumstances pertaining to the appellant in this case.

The short facts as stated to the trial Court after appellant's plea of guilty, are that during a football-match on February 16, 1969, in the stadium of Nicosia, where several hundred spectators were present, including the appellant at the central stand, he (the appellant) started shouting vulgar and insulting words at the referee when the latter decided a point against the team in which the appellant was interested. A police officer in civilian clothes who happened to be a few yards further away, called upon the appellant to stop misbehaving in that manner ; but the appellant repeated the abuse several times.

When formally charged at the police station the following day, the appellant replied that he was a fanatic friend of the Nicosia team and believing that the referee unjustly decided the point, he got so excited that he may have used vulgar language. We find it unnecessary to repeat here the expressions used, not only because of their filthy character, but also because we can see that the appellant before us feels now so ashamed of the whole incident. According to the charge-sheet the appellant is a shop-keeper, 30 years of age ; and according to his advocate, he is a decent family man with a wife and children.

The learned trial Judge recorded the reasons for which he imposed the sentence of three weeks' imprisonment, challenged by this appeal. He took the view that notwithstanding that the appellant is a first offender, his conduct in this case was

not only highly objectionable but was also dangerous to public safety as likely to cause serious public disturbance, in the circumstances. The Judge was therefore of the opinion that the appropriate sentence was one with deterrent effect on persons who cannot control their behaviour in public gatherings. And he imposed a sentence of three weeks' imprisonment out of the punishment provided by the statute which is £5 fine or one month imprisonment or both.

Learned counsel for the appellant had indeed a very difficult case to argue in challenging this sentence. He expressed appellant's profound repentance and regret; and his assurance that he would never again give any cause of complaint, having fully learned his lesson. He has already served more than half of his sentence. Learned counsel submitted that for a man of appellant's character, imprisonment short as it may have been imposed by the Court for an offence of this nature, was a hard and humiliating punishment.

We can appreciate that learned counsel seeing the effect of the sentence on his client may well be right. On the other hand, the approach of this Court to an appeal against sentence has been stated time and again in a line of cases (see *Karaviotis and Others v. The Police* (1967) 2 C.L.R. 286; *Michael Kougkas v. The Police* (1968) 2 C.L.R. 209 at p. 212). Far from finding anything wrong or unsatisfactory with the trial Judge's approach to this case, we find ourselves in full agreement with his assessment of the circumstances and with his approach regarding sentence. In *Anastassis Kyprianou v. The Police* (1968) 2 C.L.R. 119 this Court, in an appeal against a sentence of seven days' imprisonment for disorderly behaviour contrary to the same section of the Criminal Code, increased the sentence to fourteen days' imprisonment mainly to give it a stronger deterrent effect.

The matters to be considered in imposing sentence were discussed in *Charalambos Tryfona alias Aloupos v. The Republic* 1961 C.L.R. p. 246; and in the recent case of *Antonios Savva v. The Republic* (1968) 2 C.L.R. 218. And as stated in the *Karaviotis* case (*supra*) and in many other cases, the primary responsibility of measuring sentence rests with the trial Court. We find no substance whatsoever in this appeal, notwithstanding the strenuous efforts of appellant's advocate to rouse our sympathy for this client. We found it unnecessary to call on counsel for the police to answer the appeal, which must clearly fail.

What now remains is to decide whether the Court should make use of the provisions in section 147 (1) of the Criminal Procedure Law, Cap. 155, and direct that the sentence should commence from the date of conviction as submitted on behalf of the appellant ; or let the law take its course without any such directions. It is obvious that the object of the legislator in providing as he did in the section in question, was to discourage frivolous appeals. One need not elaborate in stating the reasons which make it desirable that appeals without substance should not be allowed to take the public time of this Court.

In several cases of which I shall only mention one here *Loucas Demetriou Mitsios v. The Police* (1968) 1 J.S.C. p. 44 the Court declined making any such directions ; and allowed the law to take its course. In a very recent appeal *Minas Lazarou v. The Police* (reported in this Part at p. 55 *ante*) the Court found great difficulty in making directions for the sentence to run from the date of conviction. Similar difficulties are being experienced in this case. I find great difficulty in bringing myself to agree with the view of my brother Judges that the profound repentance of the appellant before us, his good character as reflected in the police records, and the other personal repercussions of the sentence on the appellant and his family, as described by his counsel, justify in the present case directions under section 147 (1) for the sentence to run from the date of conviction. However, I bow to the majority view ; and directions shall be, accordingly, made for the sentence to run from the date of conviction. But I shall again express the hope that this will be a useful warning to convicts considering an appeal against sentence. The law is there ; and the time I think is ripe for discouraging frivolous appeals, in the practical way intended by the legislator.

Appeal dismissed ; sentence to run from the date of conviction.

Appeal dismissed ; sentence to run from the date of conviction.