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

ADAMOS PANTELIS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3053).

Criminal Law—Sentence—Sentence of life imprisonment for homicide contrary to section 205 *of the Criminal Code, Cap.* 154 *as amended by the Criminal Code (Amendment) Law* 1962 (*Law No.* 3 *of* 1962)—*Appellant's mental affliction—Should have been taken into consideration in imposing sentence—Sentence varied.*

Sentence—Homicide contrary to section 205 *of the Criminal Code, Cap.* 154 (*as amended by Law No.* 3 *of* 1962)—*See above.*

Mental Patient—Criminal mental patient—The Mental Patients Law, Cap. 252 *section* 25.

Criminal Mental Patient—See above.

Cases referred to :

Koliandris v. *The Republic* (1965) 2 C.L.R. 72.

The facts sufficiently appear in the judgment of the Court.

Appeal against sentence.

Appeal against sentence by Adamos Pantelis who was convicted on the 5th November, 1968, at the Assize Court of Nicosia (Criminal Case No. 13082/68) on one count of the offence of homicide contrary to section 205 of the Criminal Code Cap. 154 (as amended by Law 3 of 1962) and was sentenced by A. Loizou, P.D.C., Stavrinakis & Vakis, D.JJ., to life imprisonment.

L. N. Clerides, for the appellant.

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 life imprisonment imposed on the appellant by the Assize Court of Nicosia, under section 205 of the Criminal Code (Cap. 154) as amended by Law 3 of 1962, for homicide.

The appellant was charged with the premeditated murder of the person named in the information ; and was committed for trial accordingly, before the Assizes. When charged at the trial, the appellant pleaded not guilty. And after the plea, learned counsel for the prosecution informed the Court that according to the report of the appropriate Government medical officer, the appellant was suffering from " paranoic state " which, however, did not affect his ability to plead. Notwithstanding appellant's paranoia, a well known, serious mental affliction, learned counsel submitted, that it was for the appellant to establish his mental state, if that were to be put forward as a defence.

After this statement, prosecuting counsel is recorded to have applied for a break to enable him to have a further consultation with the mental specialist. Whether that was on his own initiative or otherwise, it does not appear on the record ; one may wonder why the prosecution could not have arranged for such a consultation before the trial. Be that as it may, the Assize Court granted the application ; and half an hour later when the trial was resumed, counsel conducting the prosecution, made the following statement :

> " Having considered the medical certificate of Dr. Drymiotis and its effect on the question of insanity, with the leave of the Court I would like to add a new count for homicide contrary to sections 203 and 206, as amended by Law 3 of 1962 ".

And added that the doctor was available in Court to testify regarding accused's mental condition, if required.

With the Court's leave, a count for homicide was added on the information ; and the appellant was charged on the new count ; and he pleaded guilty thereto. He was all along in the hands of an advocate of his choice who, however, did not take any part in this appeal.

Upon taking appellant's plea of guilty to the added count, the prosecuting counsel applied for leave to offer no evidence on the first count, apparently by reason of appellant's plea

of guilty to the count for homicide on the one hand and of his mental affliction, on the other. The court considered the position in the light of *Koliandris* v. *The Republic* (1965) 2 C.L.R. 72 ; acquitted the appellant on the count for premeditated murder ; convicted him on his own plea, on the count for homicide ; and passed upon him a sentence of life imprisonment on that count. This is the sentence challenged by this appeal, on the ground that it is manifestly excessive.

It is submitted on behalf of the appellant that in imposing the maximum sentence provided by law for the crime of homicide, the trial Court did not take into account sufficiently, the mental condition of the appellant which was obviously, strongly connected with the crime for which he was being sentenced. The Court rightly took into consideration, learned counsel submitted, its duty to protect the community ; but did not take into account, as they ought to have done, the personal circumstances of the appellant, the most important of which in connection with sentence, was his mental state.

The reasoning which led the Assize Court to the sentence imposed, appears on page 7 of the record. It reads :—

> " In the present case the accused has pleaded guilty to the commission of a brutal killing which it was unexplained in itself except for the paranoid ideas that the accused had been found to suffer regarding suspicions as to his wife's fidelity.
>
> The effect of this paranoid state of the mind of the accused was that the offence committed was placed in a lower category than that of the premeditated murder and, therefore, punishment is accordingly reduced from one of mandatory death penalty to imprisonment for life.
>
> The problem however, in the present case is how more effectively the Court may deal with an offender of this type and protect the society. From what we heard as to his mental state we have come to the conclusion that the intellect of the accused was in that unfortunate state where it is quite disordered to be allowed liberty with all the risks that new paranoid ideas may entail to other people, and, at the same time, not sufficiently disordered as to exonerate him of criminal responsibilities and justify his committal to a mental institution.

In the circumstances we find no reason to justify us in imposing a lighter sentence than the maximum provided by law. We cannot lose sight of the fact that it was a crime, brutal in conception and execution and but for his mental state it would not but have been a premeditated murder. Therefore, accused is sent to prison for life".

Learned Counsel for the Attorney-General found it extremely difficult to explain to this Court in a satisfactory manner the reasons for which the mental state of the appellant, if such as to justify the addition of the count for homicide, in the circumstances of this case, was not sufficient to vitiate his plea. The facts in the *Koliandris* case (*supra*) were fundamentally different. There, the mental affliction of the appellant was described by the medical witness called by the Court, as "recurrent depression"; and the case turned on the point of time when did the appellant form the intention to stab his victim, a young girl against whom he had no motive for such action. After hearing the medical expert in the appeal, the Court was in doubt as to when was the intention to kill formed. Whether it was not at the actual time of the wounding; and giving to the appellant the benefit of that doubt, substituted a conviction for homicide to that of premeditated murder. The position is completely different in this case where the conviction is not in issue; and we cannot deal with that matter at all. Moreover, from the record there did not seem to arise the question as to whether, due to mental affliction, the appellant formed the intention to kill *only* at the material time and not earlier.

Dealing with the sentence alone, we think that in the circumstances of this case, the mental affliction of the appellant is a matter which should have been taken into consideration in imposing sentence for the crime for which he stood convicted. We feel that on account of his mental affliction the appellant was entitled to receive a punishment less than the maximum provided by law; and to this extent we think that the appeal must be allowed. The appellant may well have been a person who should have been treated as a criminal mental patient under the provisions of the Mental Patients Law (Cap. 252); and he may still be found as a prisoner falling within section 25 of that statute. But it is not for us at this stage, and in an appeal of this nature, to deal with that matter. The Attorney-General will, no doubt, give the appropriate directions; and the Director

of Prisons will take the appropriate action. All we can say now, is that the appellant is a dangerous person; in view of his conviction (which cannot now be disturbed) a dangerous criminal. Dangerous to himself; dangerous to his family, especially his wife; and dangerous to the community, as this case shows. Unfortunate as that may be, he must be treated accordingly. And in view of all the possibilities arising in his case, the appropriate sentence to fit the crime and the criminal before us is, we think, twenty years imprisonment.

Appeal allowed. Sentence varied accordingly.