

ROBERT PULLEN AND ANOTHER,

Appellants,

v.

THE REPUBLIC,

Respondent.

ROBERT
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ANOTHER
v.
THE REPUBLIC

(*Criminal Appeals Nos. 3141 and 3142*).

(*Consolidated*).

Sentence—Five years' imprisonment for robbery with violence—Sections 282 and 283 of the Criminal Code, Cap. 154—Appellants first offenders and rather young and immature—Sentence reduced on appeal to one of three years' imprisonment from conviction.

Appeal—Sentence—Principles upon which the Court of Appeal will interfere with sentences imposed, well settled—In the present case the sentence was reduced—It appears that the trial Court did not attach the proper weight to certain mitigating factors—See, also, supra.

Sentence—Primary responsibility for assessing sentence rests with trial Courts—Approach of the Court of Appeal—See supra.

Robbery with violence—Sections 282 and 283 of the Criminal Code, Cap. 154—Sentence—See supra.

Cases referred to :

Ppais v. The Republic (1967) 2 C.L.R. 115 ;

Iroas v. The Republic (1966) 2 C.L.R. 116 ;

Koukkas and Others v. The Police (1968) 2 C.L.R. 209.

The appellants, two young members of the Royal Air Force, aged 20 and 21, respectively, first offenders and having a good conduct classification in the R.A.F. took this appeal against the sentence of five years' imprisonment imposed on them by the Assize Court of Limassol on a charge of robbery with violence contrary to section 282 and 283 of the Criminal Code, Cap. 154. The facts sufficiently appear in the judgment of the Court, reducing the sentence to one of three years' imprisonment from conviction.

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Appeals against sentence.

Appeals against sentence by Robert Pullen and Another who were convicted on the 7th October, 1970, at the Assize Court of Limassol (Criminal Case No. 12152/69) on one count of the offence of robbery with violence contrary to sections 282, 283 and 20 of the Criminal Code, Cap. 154, and were sentenced by Malachos, P.D.C., Vassiliades and Loris, D.JJ., to five years' imprisonment each.

S. McBride, for the appellants.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The two appeals before us arise from the same case and were heard together after a consolidation order made on a joint application at the opening of the appeal.

Both appellants were convicted in the Assize Court of Limassol, on October 7, 1969, of robbery with violence, committed at Limassol on June 20, 1969, by the two appellants acting together in the planning and the commission of the crime. They were jointly charged ; they were committed for trial together ; and they both pleaded guilty in the Assize Court, to the only count in the information which was for robbing with violence (contrary to sections 282 and 283 of the Criminal Code of Cyprus, Cap. 154), a Limassol shopkeeper, of the sum of £7 in cash. They were convicted accordingly ; and were each sentenced to five years' imprisonment. They now both appeal against sentence, mainly on the ground that it is manifestly excessive.

The two appellants are young British servicemen. Robert Pullen, 21 years of age, joined the Royal Air Force in the United Kingdom, in 1965 ; and at the material time he was stationed at the Sovereign Base Area of Akrotiri in the District of Limassol. Stephen Jeffrey Edwards, 20 years of age, joined the Royal Air Force in 1966, in the U.K. ; and was likewise stationed at Akrotiri S.B.A.

On June 20, 1969, both appellants hired a car, presumably for a pleasure drive ; and at about 4.30 in the afternoon went together to the grocery shop of the victim at Ayia Zoni quarter of Limassol town. The shopkeeper, a man of about 65 years of age, was alone in his shop at the time. Both

appellants were unknown to him. One of them asked for a box of matches and bought one. They left the shop together.

A few minutes later the two appellants returned to the shop and asked for a packet of Kensitas cigarettes. The shopkeeper replied that he did not have them. Then all of a sudden, one of the two customers (who was later found to have been appellant Pullen) attacked the shopkeeper kicking and pushing him into an inner store-room while the other appellant (Edwards) took the cash from the till, amounting to £7, and entering the inner room delivered two or three strong fist blows on the shopkeeper's face breaking his spectacles and bruising badly his left eye. Soon after the departure of his assailants, the shopkeeper called out for help ; and the police were there within a short time.

Leaving the shop together, the two appellants got into their hired car and drove off fast, taking the shopkeeper's money with them. The way they drove off attracted the attention of a neighbour, a serviceman's wife, on whose information regarding the car, the police were able to arrest appellant Edwards when he went to deliver the hired car to its owner, at about 8.30 in the evening of the same day ; approximately four hours after the crime.

The arrested appellant, at first denied knowledge of the crime. But when interrogated in the presence of the R.A.F. police, later in the same evening, he (appellant Edwards) confessed ; and on his statement appellant Pullen was also arrested ; and confessed. They spent the stolen money at a party at Britannia Bar, they said. In the course of the investigation it was disclosed that appellant Pullen had an amount of £99.3.7d. available with his officer ; while appellant Edwards had £82.14.3d. Both appellants were first offenders ; and had a good conduct classification with the R.A.C.

In passing sentence, the trial Court reminded the appellants that they stood convicted of robbery with violence which both in England and in Cyprus is considered as a serious crime, punishable, when committed in aggravated circumstances, with imprisonment for life.

Taking into consideration their young age and the fact that they were first offenders, the Assize Court felt that at the same time, they also had to take into account the claim of the law-abiding citizen to protection by the proper application of the criminal law, upon " the aggressor who has

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no respect for the law". In the circumstances of this case, the trial Court thought that the appropriate sentence was one of five years' imprisonment ; and imposed sentence accordingly.

Learned counsel for the appellants stressed their young age and good conduct in the past. He submitted that for first offenders of that age, a term of five years' imprisonment might well ruin the rest of their life. Suggesting that this looked more like a "television expedition" than like the work of nasty criminals, counsel referred to *Soteris Ppais v. The Republic* (1967) 2 C.L.R. 115, where for entering a dwelling house by night with intent to steal, a man of 28 was sentenced by the Assize Court of Kyrenia to one year imprisonment ; and his companion to nine months.

We do not think that the two cases have sufficient in common to make a comparison useful. In dismissing an appeal against sentence in that case, the court took the view that the term imposed was rather lenient than excessive ; and let the sentence run from dismissal of the appeal. We could refer to cases where for robbery severe, and even heavier, sentences were imposed. The crime is obviously very serious and strikes at the root of public security. Each case must be determined on its own facts and other relevant circumstances, which vary so much.

In the case before us, we fully appreciate the anxiety of the trial Court in facing the prospect of similar conduct on the part of young servicemen in an area situated so closely to military bases. Apparently the Assize Court felt that they should make it perfectly clear that such "television expeditions" are dangerous for all concerned ; and must be discouraged.

On the other hand, it is not suggested that such conduct is of frequent occurrence ; or even that it ever happened in the past. We do not know whether this is so or not ; but let us hope that it is so. The two appellants are obviously rather young and immature ; and they are first offenders. The sentence imposed is rather heavy, apparently intended to deter others from indulging in such objectionable practices.

It has been said that sentencing is a very difficult and very delicate function of the criminal court ; and that the responsibility for measuring the sentence rests primarily with the trial Court. (See *Michael Afxenti Iroas v. The Republic* (1966) 2 C.L.R. 116 ; *Koukgas and Others v. The Police* (1968)

2 C.L.R. 209). This court will only interfere with a sentence where sufficient reasons are shown in a case, making intervention necessary. Here the reasons put forward are the young age and immaturity of the appellants, who are first offenders, of good conduct. These are matters which must be taken into consideration in connection with sentence ; and which the trial Court did take into account.

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The only question for us to consider is whether the trial Court attached to them the weight which these matters must properly carry in the circumstances of this particular case. The question gave us considerable difficulty ; and it is with great hesitation and reluctance that some of us were ultimately able to agree that the sentence imposed should be reduced to three years' imprisonment from conviction.

The appeal is allowed ; and the sentence on each appellant is reduced to three years from conviction.

Appeal allowed.