

STYLIANOS SOCRATOUS,

Appellant,

v.

THE REPUBLIC,

Respondent.

STYLIANOS
SOCRATOUS
v.
THE REPUBLIC

(*Criminal Appeal Nos. 3207, 3208*).

Sentence—Shopbreaking—Sections 294 (e) and 20 of the Criminal Code, Cap. 154—Appellant a young person convicted and sentenced by the District Court to nine months' imprisonment—Same sentence imposed on appellant's two co-accused—Appellant convicted and sentenced to fifteen months' imprisonment (to run concurrently with the said sentence of nine months' imprisonment) by the Military Court for another similar offence—Considerations of equal treatment and appellant feeling that his being in the army was a disadvantage to him—Sentence of the Military Court reduced—Cf. infra.

Appeal—Sentence—Appeal against sentence—Approach of the Supreme Court to such appeals.

Sentence—Sentencing is a delicate and difficult function of the Court charged with that responsibility.

Cases referred to :

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

Hapsides v. The Police (1969) 2 C.L.R. 64, at p. 66 ;

Castelow and Another v. The Police (reported in this Part at p. 141 *ante* ; at p. 148) ;

Achilleos v. The Police (reported in this Part at p. 150 *ante* ; at p. 153).

The facts sufficiently appear in the judgment of the Court, allowing in part the appeal and reducing the sentence passed by the Military Court.

Appeals against sentence.

Appeals by Stylianos Socratous against the sentences of 9 and 15 months' imprisonment imposed on him by the District Court of Nicosia and the Military Court, respectively, on the 10th and 15th October, 1970 (*Criminal*

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Case No. 9444/70 and Military Court Case No. 192/70 upon his plea of guilty of the offence of shopbreaking, contrary to sections 294 (a), 295 and 20 of the Criminal Code, Cap. 154, and section 5 of the Military Criminal Code and Procedure Laws, 1964 to 1967.

Appellant appeared in person.

M. Kyprianou, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

VASSILIADES, P. : These two appeals were heard together. They concern the same person ; they arise from a series of similar offences and concurrent sentences. All parties concerned agreed that the two appeals should go together.

The appellant, a young man of 20 years of age, from a village on the Troodos hills, working as a mason in Nicosia, fell into bad company and committed, together with two other persons (one of them 15 years his senior) a series of shopbreakings. He was caught red-handed in a shop broken into during the night, where the police, acting on information found the appellant concealed under a carpet. He made a clean breast of what had happened that evening ; and when at the Police station, shortly afterwards, he gave the story of some 11 similar offences, committed recently by the same group.

The appellant was prosecuted, together with the two other persons in question, in the District Court of Nicosia, where, after a plea of guilty by all accused, the trial Judge proceeded to consider sentence. Regarding the appellant, the Judge had before him a social investigation report ; as well as the evidence of a Government Mental Specialist to the effect that the appellant is of a " psychopathic personality". From the social investigation report it appears that he had a rather difficult childhood in an unsettled family environment. While still only a youth, he had an affair with an equally unfortunate girl of a neighbouring village, who is now his fiancée and in an advanced state of pregnancy.

The offence for which the learned trial Judge was to pass sentence, was the breaking into a shop with intent to steal ; but nothing was stolen as the appellant was arrested,

apparently before he had time to complete his purpose. Counsel appearing for the accused applied under section 81 of the Criminal Procedure Law, Cap. 155, that twelve other cases of the same nature pending against his client, be taken into consideration in passing sentence. The prosecution agreed to this course ; and made available to the Court the pending charges which were read to and admitted by the accused.

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Sentencing in these circumstances was not an easy matter. After due consideration the learned trial Judge arrived at the conclusion that the appropriate sentence would be one of imprisonment ; and, weighing all relevant matters passed on the appellant a sentence of nine months' imprisonment, taking into consideration all the cases pending against him, except a shopbreaking committed a little earlier while the appellant was still doing his national service, which fell within the jurisdiction of the Military Court. The same sentence was passed on appellant's two co-accused.

Five days later, on October 15, appellant was charged before the Military Court of Nicosia, for committing the shopbreaking referred to above, while he was still a soldier. The accused pleaded guilty to the charge ; and the Court taking into consideration all relevant matters, including two convictions for military offences, passed a sentence of 15 months' imprisonment, to run concurrently with the sentence passed on the appellant in the District Court. Against both these sentences the appellant took the present appeal ; appearing today in person before us.

Without going into detail, we propose following the line settled in a number of cases where this Court was dealing with appeals against sentence. It is well settled that the primary responsibility for measuring sentence rests on the trial Court ; and that the Court of Appeal will not interfere with a sentence, unless the appellant can show that there are sufficient reasons for such intervention. (See *Michael Kougkas v. The Police* (1968) 2 C.L.R. 209 at p. 212 ; *Hapsides v. The Police* (1969) 2 C.L.R. 64 at p. 66). It has also been said that sentencing is a delicate and difficult function of the Court charged with that responsibility (See *Anthony Castelow and Another v. The Police* (reported in this Part at p. 141 ante; at p. 148); *Michael Achilleos v. The Police* (reported in this Part at p. 150 ante; at p. 153)). It cannot be said in this case that the Military Court did not have good reasons for imposing

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on the appellant a severer sentence than that imposed in the District Court. The same offence committed by a person in military service calls for a severer sentence than if committed by a young civilian ; moreover, the Military Court made the sentence concurrent to that passed a few days earlier by the District Court.

On the other hand, the young appellant before us may feel that he has not had equal treatment with his other two co-accused, one of whom was considerably older than the appellant. He may well feel that his being in the Army when committing the shopbreaking for which he was sentenced by the Military Court, was a disadvantage to him, which made his sentence six months longer than that of his co-accused. Taking all these matters into consideration, including the social and medical reports regarding the appellant, we came to the conclusion, not without considerable difficulty and hesitation, that this appeal should be partly allowed and the sentence of the Military Court be reduced so as to run for the same period as the sentence of the District Court. The sentence to run from conviction.

Appeal allowed in part.