1970
Feb. 3

NICOS CHARALAMBOUS TERLAS
v.
THE POLICE

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

NICOS CHARALAMBOUS TERLAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3143).

Firearms—Possessing revolver—Contrary to sections 4 (1) (2) (*b*) *and* 27 *of the Firearms Law, Cap.* 57, *as amended by Law No.* 11 *of* 1959—*Conviction resting on the uncorroborated evidence of accomplices—Trial Court's findings not unsatisfactory—Conviction upheld—Sentence of* 15 *months' imprisonment—Not excessive in the circumstances of this case—Rather on the lenient side—In view, however, of the considerable delay in bringing the case to Court, directions made under section* 147 (1) *of the Criminal Procedure Law, Cap.* 155 *that sentence should run from the date of conviction* (*and not from the date of dismissal of the appeal*).

Evidence in criminal cases—Accomplice—Evidence of accomplices—Uncorroborated—Conviction resting on such evidence—Upheld in the circumstances of this case—Findings made by trial Court satisfactory—Proper evaluation of the evidence by the trial Court.

Accomplice—Uncorroborated evidence—See supra.

Sentence—Primary responsibility of trial Courts to impose the appropriate sentence—The Court of Appeal will not interfere with sentences unless there are good reasons shown—Approach of the Appellate Court to appeals against sentence.

Criminal Appeal—Appeal against sentence—Approach of the Court of Appeal—See supra.

Findings of fact made by trial Courts—Principles upon which the Court of Appeal will interfere.

Criminal Appeal—Findings of fact made by trial Courts—Approach of the Court of Appeal.

Sentence—Delay in prosecuting case—May in certain circumstances affect sentence to be imposed.

Delay in bringing matter to Court—May affect sentence to be imposed—See supra ; *cf. also hereabove under Firearms.*

The appellant a young taxi driver of twenty-five years of age was convicted by the District Court of Nicosia, upon a charge for possessing a revolver without the required permit contrary to sections 4 (1) (2) (*b*) and 27 of the Firearms Law, Cap 57 as amended by Law No 11 of 1959 , and was sentenced to 15 months' imprisonment The conviction admittedly rested on the evidence of accomplices without corroboration

He now appeals both against conviction and sentence The appeal against conviction is taken on the ground that the findings of the trial Court, resting mainly on the uncorroborated evidence of accomplices, are unsatisfactory and should, therefore, be set aside The appeal against sentence is taken on the ground that for an unserviceable and practically useless revolver, regarding the possession of which there was more than a year's delay in filing a prosecution, a sentence of fifteen months' imprisonment is manifestly excessive

Dismissing the appeal, but directing under section 147 (1) of the Criminal Procedure Law, Cap 155 that the sentence should run from the date of conviction, the Court :—

Held, as to the conviction

(1) In a careful judgment the trial Judge made it clear that he received the evidence for the prosecution with the reservation and care due to the testimony coming from accomplices without other corroborative evidence , and that, after warning himself against the dangers from such evidence, he was satisfied that he could safely act upon it in this case, and convicted the appellant as charged

(2) We have not been persuaded that the evaluation of the evidence by the trial Judge was defective , or that his findings were in any way unsatisfactory. (See *Mavroyiannos* v *The Police* (1969) 12 J S C. 1520) We, therefore, uphold them ; and this disposes of the appeal against conviction

Held, as to the sentence imposed

(1) The primary responsibility for imposing the appropriate sentence, rests with the trial Court This Court will not interfere with a sentence on appeal unless the appellant can show sufficient reasons for intervention (See *Kougkas* v. *The Police* (1968) 2 C L R 209 , *Hapsides* v *The Police* (1969) 2 C L R 64) No such reason has been shown in the instant case. On the contrary, in the circumstances

of this case, including the appellant's previous convictions, one may even think that the sentence imposed (15 months' imprisonment) is rather on the lenient side. The appeal against sentence must also be dismissed.

(2) Considering, however the complaint regarding the one year's delay in bringing the matter to Court, we think that directions should be made under section 147 (1) of the Criminal Procedure Law, Cap. 155, for the sentence to run from the date of conviction.

Appeal dismissed ; sentence to run as aforesaid.

Cases referred to :

Mavroyiannos v. *The Police* (1969) 12 J.S.C. 1520 ;

Farfaros v. *The Police* (1963) 1 C.L.R. 36 ;

Kougkas v. *The Police* (1968) 2 C.L.R. 209 ;

Hapsides v. *The Police* (1969) 2 C.L.R. 64.

The facts sufficiently appear in the judgment of the Court.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Nicos Charalambous Terlas who was convicted on the 29th November 1969, at the District Court of Nicosia (Criminal Case No. 15068/69) on one count of the offence of possessing a revolver contrary to sections 4 (1) (2) (*b*) and 27 of the Firearms Law, Cap. 57 as amended by Law 11/59 and was sentenced by Stavrinakis, D.J., to 15 months' imprisonment.

E. Efstathiou, for the appellant.

Cl. Antoniades, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant, a young taxi driver of 25 years of age, was convicted on November 22, 1969, in the District Court of Nicosia, upon a charge preferred by the Police, for possessing a revolver without the required permit, contrary to the relevant provisions of the Firearms Law, Cap. 57 ; and was sentenced to 15 months' imprisonment. He now appeals against both his conviction and sentence.

The appeal against conviction is taken on the ground that the findings of the trial Court, resting mainly on the evidence of an accomplice and other persons of similar character connected with the offence, are unsatisfactory ; and the conviction based upon such findings should be set aside. The appeal against sentence is taken on the ground that for an unserviceable and practically useless revolver, regarding the possession of which there was more than a year's delay in filing a prosecution, a sentence of 15 months' imprisonment is manifestly excessive.

The short facts of the case are that the Police, acting on information, called one of the accomplices to the station who, apparently, helped them to find in his (the accomplice's) house, the revolver in question, together with five rounds of ammunition. The articles so found were produced at the trial ; and are now before us as *exhibit* 1. The prosecution conceded all along that the revolver is unserviceable in its present condition ; but it certainly looks like one and satisfies the statutory definition. This accomplice was not prosecuted but was called as a witness for the prosecution to state that the appellant, together with another accomplice (who also gave evidence for the prosecution) had sold and delivered to him the revolver found in his (the witness-accomplice's) house, for £5.

On discovering that it was unserviceable, the witness tried to get his money back, returning the prohibited articles, soon after the illegal transaction in question. In the course of this attempt, which was made in a coffee-shop in the presence of another friend (who also gave evidence for the prosecution), the appellant agreed to the proposal but had no money with him, he said ; and until he could find it, the buyer could keep the article. That is how it was found in his house several months later.

The appellant denied that he was the person who sold and delivered the revolver. Appellant's version was that it was the first accomplice who did so, delivering it in a bag, in appellant's presence ; and taking the £5. Later, in the coffee-shop, the appellant was trying to persuade, he said, the other accomplice to return the £5 ; but the latter did not have all the money with him (he only had 30/-), and the buyer kept the article pending return of his money. The appellant stuck to his story at the trial where he gave evidence for the defence.

The trial Judge, after hearing all these " friends " from the witness box, accepted the evidence for the prosecution; and disbelieved the appellant. In a careful judgment, the

Judge made it clear that he received the evidence for the prosecution with the reservation and care due to the testimony coming from accomplices ; and that, after warning himself against the dangers from such evidence, he was satisfied that he could safely act upon it in this case. He found accordingly ; and convicted the appellant as charged.

The able argument of learned counsel for the appellant before us this morning, and the careful way in which he went into detail, in his endeavour to present the weaknesses in the case for the prosecution, did not persuade us that the evaluation of the evidence by the trial Judge was defective ; or that his findings were in any way unsatisfactory. (See *Mavroyiannos* v. *The Police* (1969) 12 J.S.C. 1520). We therefore uphold them ; and this disposes of the appeal against conviction.

As regards the sentence, learned counsel for the appellant stressed the fact that the revolver was unserviceable ; and either useless as a weapon, or at least, not dangerous. These are matters which may well be taken into consideration regarding sentence. We have no reason to doubt that the trial Judge did take them into account when considering the question of sentence.

Another point taken on behalf of the appellant in this connection, was the delay in taking the matter to court. Counsel referred to *Nicolas Christodoulou* alias *Farfaros* v. *The Republic* (1963) C.L.R. Part 1, 36, and pointed out that while the information regarding the case reached the Police as early as May, 1968, no prosecution was filed until September, 1969. Matters were no longer fresh in the minds of the witnesses, which may well have prejudiced the appellant.

Counsel for the Police was not in a position to explain the delay notwithstanding the fact that he tried to find out the reason from the police records. We think the complaint is justified ; but we should not attach to it more than the appropriate weight in the circumstances of this particular case.

Giving the matter our best consideration, in the light of the Social Investigation Report from the Welfare Office, regarding the appellant, and considering his character as reflected in this, as well as in the Prison Welfare Officer's report, and the list of his previous convictions, we do not think that the sentence imposed by the trial Court is excessive. Notwithstanding his young age (he is 25), he has no less than fifteen previous convictions for a variety of offences,

including housebreaking, assaults, carrying a firearm and escaping from lawful custody, for which he received several sentences of imprisonment, one of which he was still serving when convicted in the present case. In the circumstances, one may even think that the sentence imposed, is on the lenient side.

The primary responsibility, however, for imposing the appropriate sentence, rests with the trial Court. This Court will not interfere with a sentence on appeal unless the appellant can show sufficient reason for intervention. (See *Kougkas* v. *The Police* (1968) 2 C.L.R. 209 ; *Hapsides* v. *The Police* (1969) 2 C.L.R. 64). No such reason has been shown in the instant case. But considering the complaint regarding the delay in bringing the matter to Court, we think that directions should be made under section 147 (1) of the Criminal Procedure Law, Cap. 155, for the sentence to run from the date of conviction.

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

Appeal dismissed ; sentence to run as aforesaid.