1970
Mar. 5
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NICOLAS GEORGHIOU IOANNOU
v.
THE POLICE

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

NICOLAS GEORGHIOU IOANNOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3147).

Contradictory statement by a witness—Contrary to section 113 (2) *of the Criminal Code, Cap.* 154—*Sentence—Five months' imprisonment—Appeal—No sufficient reason for intervention of the Court of Appeal—Appeal dismissed—See further* infra.

Sentence—Appeal—Principles upon which the Court of Appeal will interfere with sentences imposed—Principles applicable.

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

Pre-sentence information—Need of—Stressed by the Court of Appeal—Social Investigation Report and Report by the Prison Welfare Officer called by, and supplied to, the Court of Appeal.

Social Investigation Report—Desirable in certain cases—Such as the present one—Court of Appeal, therefore, directed that such report should be submitted to it before disposing of the case—See, also, supra.

The appellant was convicted by the trial Court of the offence usually referred to as contradictory statement by a witness contrary to section 113 (2) of the Criminal Code, Cap. 154, and was sentenced to five months' imprisonment. He took this appeal against sentence on the ground that it is manifestly excessive.

After reviewing the facts, the Court, dismissing the appeal:—

Held, (1) (*a*). It soon became obvious in the course of these proceedings that more information regarding the appellant was necessary to enable this Court to deal with the only question in the appeal : Whether the sentence of five months' imprisonment was or was not manifestly excessive. We had, therefore, to adjourn to enable counsel for the prosecution to supply the Court with a social investigation

report. The Prison Welfare Officer as well as the Social Investigation Officer prepared and filed in due course the reports which are now before us.

(*b*) The need for such pre-sentence information was stressed on more than one occasions. (See *The Attorney-General* v. *Stavrou and Others*, 1962 C.L.R. 274, at p. 277 ; *Lazarou* v. *The Police* (1969) 2 C.L.R. 184 ; *Evangelou* v. *The Police* (reported in this Part at p. 45 *post*) ; *Kourris* v. *The Police* (reported in this Part at p. 53 *post*)).

(2) We cannot say what the effect of the information now before us, might be on the mind of the trial Judge if such information were placed before him when he was dealing with the question of sentence. But approaching this matter on the basis that this Court will not interfere with sentences imposed by trial Courts unless there is sufficient reason for such intervention, we do not feel in the circumstances of this case, including those pertaining to the accused we should interfere. The appeal, therefore, is dismissed and the sentence to run according to law from today (section 147 (1) of the Criminal Procedure Law, Cap. 155).

Appeal dismissed. Sentence to run from today.

Cases referred to :

Mavros v. *The Police* (1963) 1 C.L.R. 100 ;

The Attorney-General v. *Stavrou and Others*, 1962 C.L.R. 274, at p. 277 ;

Kioftes v. *The Republic* (Criminal Appeal No. 2413, unreported) ;

Lazarou v. *The Police* (1969) 2 C.L.R. 184 ;

Evangelou v. *The Police* (reported in this Part at p. 45 *post*) ;

Kourris v. *The Police* (reported in this Part at p. 53 *post*) ;

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

Pullen v. *The Republic* (reported in this Part at p. 13 *ante* ; at pp. 16–17).

Appeal against sentence.

Appeal against sentence by Nicolas Georghiou Ioannou who was convicted on the 20th January, 1970, at the District Court of Nicosia (Criminal Case No. 18508/69) on one count of the offence of making a contradictory statement contrary to section 113 (2) of the Criminal Code, Cap. 154 and was sentenced by Stavrinakis, D.J., to five months' imprisonment.

Appellant appearing in person.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant was convicted in the District Court of Nicosia on January 20, 1970, of the offence usually referred to as contradictory statement by a witness, contrary to section 113 (2) of the Criminal Code, Cap. 154 ; and was sentenced to five months' imprisonment. He took the present appeal against sentence on the ground that the term imposed by the trial Court is in the circumstances, manifestly excessive.

The particulars of the offence charged were that—

"... on November 20, 1969, at Nicosia ... being a witness in a case (for the possession of a pistol without a special permit) ... against Nicos Charalambous Terlas ... and having made a statement to acting Police Sgt. 1444, M. Kouis, an investigating officer, subsequently on his examination as a witness in the summary trial (of the said Terlas) did make a statement tending to prove the innocence of (the said Terlas) contradictory to his first statement to acting P.S. 1444 M. Kouis."

At the trial the appellant appearing together with his advocate, pleaded guilty to the charge ; and was convicted accordingly.

The short facts of the case as stated to the Court by the prosecuting police officer after appellant's plea, are that the appellant having made a statement to the investigating officer named in the charge, to the effect that a fellow prisoner in the central prison had spoken to him regarding the possession of a pistol, retracted from that statement at the trial of the case.

After hearing appellant's advocate in mitigation, and after taking from the prosecuting officer information regarding appellant's previous convictions, the trial Judge took the view, according to his notes, that the appellant had "committed a serious offence ". He referred to *Stelios Hji Agapiou* alias *Mavros* v. *The Police* (1963) 1 C.L.R. 100 ; and noting that the alleged statement of the fellow prisoner amounted to an admission on his part for the possession of a prohibited

dangerous weapon and was therefore " of importance in a criminal trial ", the trial Judge reached the conclusion that imprisonment was the appropriate sentence ; and imposed a term of five months' imprisonment.

When the appeal came up for hearing before us on February 26, 1970, the appellant appeared in person. It soon became obvious that more information regarding the appellant was necessary to enable the Court to deal with the only question arising in the appeal: Whether the sentence was, or was not, manifestly excessive. We, therefore, had to adjourn the hearing till March 5, 1970, to enable counsel for the prosecution to supply the Court with a social investigation report. The Prison Welfare Officer as well as a Social Investigation Officer prepared and filed in due course the reports which are now before us. Counsel for the prosecution and the appellant were duly supplied with copies.

The need for such information in connection with sentence was stressed on more than one occasions. In *The Attorney-General* v. *Georghios Stavrou and Others*, 1962 C.L.R. 274, this Court referred to *Kioftes* v. *The Republic* (Criminal Appeal 2413, unreported) and repeated (at p. 277) that—

> " 'such reports are very useful where the offenders are young persons and the Court felt confident that all courts would avail themselves of such reports in appropriate cases '. And it added that ' it is to be regretted that since then more than once this Court had to adjourn the hearing of an appeal against sentence, as we had to do in this case, in order to have such reports prepared and filed '."

The need for pre-sentence information was also recently stressed by this Court. We shall only refer to a few recent cases. In *Lambros Lazarou* v. *The Police* (1969) 2 C.L.R. 184, it was again found necessary to call for such information.

> " In the instant case (it was said at p. 188) the trial Judge did not have before him the full picture of the appellant as seen in the light of the medical and the social investigation reports obtained and admitted here under section 25 (3) of the Courts of Justice Law (14/60). In the light of these reports we think that the sentence must be varied to fit the offence as well as the offender. The matter is not free of difficulty, we gave it anxious consideration. "

In *Andreas Evangelou* v. *The Police* (Criminal Appeal 3149, decided on the 2nd April, 1970) * and in *Demetris Kourris* v. *The Police* (Criminal Appeal 3161, decided on the 14th May, 1970) † the need for pre-sentence reports was again stressed, especially where the case seems to call for a severe sentence.

The responsibility, however, for measuring sentence rests primarily with the trial Court. This Court will only interfere on appeal, for sufficient cause shown. (*Karaviotis* v. *The Police* (1967) 2 C.L.R. 286 ; *Robert Pullen* v. *The Republic* (reported in this Part at p. 13 *ante* ; at pp. 16-17)). Considering the matter in the light of the information contained in the reports now before us, we have not reached the conclusion that we should interfere with the sentence imposed by the trial Judge. We cannot say what the effect of the information now before us, might be on the mind of the trial Judge if such information were placed before him when he was dealing with the question of sentence. But approaching this matter on the basis that this Court will not interfere with a sentence imposed by the trial Court unless there is sufficient reason for such intervention, we do not feel that in the circumstances of this case, including those pertaining to the accused, we should interfere with the sentence.

The appeal is, therefore, dismissed ; the sentence to run according to law (section 147 (1) of Cap. 155) from today.

Appeal dismissed.

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* Reported in this Part at p. 45 *post*.

† Reported in this Part at p. 53 *post*.