YIANNAKIS PAPAS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3176).

Arson—Sentence—Setting fire to a building and to goods found therein—Sections 315 (*a*) *and* 319 *of the Criminal Code, Cap.* 154*—Conviction, mainly based on evidence of identification of appellant's car being driven away from the scene of the crime, sustained—Sentence—Sentence of four years' imprisonment reduced into one of eighteen months' coupled with an order for compensation for* £640 *failing payment of which appellant should serve another year's imprisonment.*

Sentence—Sentence of four years' imprisonment is in the circumstances of this case manifestly excessive—Unblemished past record of the appellant, a young man of twenty-five years' of age—Appellant standing the risk to lose a very good job with the Cyprus Telecommunications Authority—Appellant engaged to be married—The appellant is not so much in need of reform as to hold that four years' imprisonment is not manifestly excessive—And the sense of retribution for the offences committed can be satisfied by a much shorter sentence and the payment of full compensation (i.e. £640 supra)*—Sentence of four years' imprisonment reduced into one of eighteen months' coupled with an order for compensation for* £640 *failing payment of which appellant should serve another year's imprisonment.*

Sentence—Need of criminal's reform—Sense of retribution—Order for full compensation—See supra.

Compensation—Order for full compensation—See supra.

The facts sufficiently appear in the judgment of the Court, whereby, dismissing the appeal against conviction but allowing the appeal against sentence, it reduced the term of imprisonment from four years' to eighteen months' and made also, an order for full compensation of the complainant for £640.

1970
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YIANNAKIS
PAPAS
v.
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Appeal against conviction and sentence.

Appeal against conviction and sentence by Yiannakis Papas who was convicted on the 25th May, 1970, at the Assize Court of Limassol (Criminal Case No. 5445/70) on two counts of the offences of arson and setting fire to goods in a building contrary to sections 315 (*a*) and 319, respectively, of the Criminal Code, Cap. 154, and was sentenced by Malachtos, P.D.C., Vassiliades and Loris, D.JJ., to 4 years' imprisonment on each count, the sentences to run concurrently.

G. Cacoyiannis and *E. Theodoulou*, for the appellant.

S. Nicolaides, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by Triantafyllides, J.

VASSILIADES, P. : The case was discussed at length during the two days of the hearing of the appeal. The discussion went into considerable detail, especially regarding the crucial issue of the identification of appellant's car. This enables us to dispose of the case without having to reserve our judgment. Mr. Justice Triantafyllides will deliver the judgment of the Court.

TRIANTAFYLLIDES, J. : In this case the appellant appeals against his conviction, on the 25th May, 1970, by the Assize Court at Limassol, on two counts of arson : One charging him with setting fire, on the 23rd February, 1970, to a building, at Limassol, contrary to section 315 (*a*) of the Criminal Code (Cap. 154), and another charging him with setting fire, on that date, to goods in the building, contrary to section 319 of the Criminal Code. He, also, appeals against concurrent sentences of four years' imprisonment each, which were imposed on him on his conviction in respect of the said counts.

The salient facts of this case, on the basis of evidence which was, rightly in our view, accepted by the trial Court, are as follows :—

The building in question is a small shop at Gladstone Street, Limassol. It consists of a single room and has only one door, next to which there is the shop window.

This shop was leased, at the time, to a relative of the appellant, a seamstress, who was using it both as a workshop and as a place for the sale of ready-made dresses. The goods in the shop, as well as the shelves and machinery, were insured.

A few days before the 23rd February, 1970, part of the lower glass pane of the door of the shop was broken and until the said date it had not yet been repaired.

At about 12.25 a.m. in the night of the 22nd to the 23rd February, 1970, a fire broke out in the shop ; it started at a spot just inside the door of the shop, near the hole in the broken glass pane.

The fire caused damage to the contents of the shop as well as to part of the building itself, namely the shop window.

Just at the time when the fire was starting, a British Royal Air Force (RAF) police landrover, which was driven by an RAF police sergeant and in which there was an RAF police corporal acting as an observer and radio operator, was in the vicinity of the shop.

The RAF policemen noticed that there was something flaring up in the shop and saw a male person proceeding from the window of the shop to a car which was parked practically next to such window and driving away ; so they started chasing the said car.

The car appeared to be a " Renault 10 " model, " off-white " in colour and with a registration number commencing with two letters which seemed to be either " CF " or " DF ". When it was first seen outside the shop all its lights were on, but later on, as soon as the chase started, they were switched off and they were not turned on again until the car had reached the end of the built-up area of Limassol.

The car, with the landrover following it, proceeded at considerable speed towards Ayia Phyla village, near Limassol ; after it had gone round a bend, just before that village, those in the landrover lost sight of it.

Eventually, after a search of about five minutes in the village, the RAF policemen came across an off-white coloured car, a " Renault 8 " model, parked in a side street ; its registration number being DF488. Nobody was in the car at the time, but its engine was extremely hot, giving clearly the impression that it had been driven in the immediate past.

The RAF policemen informed by wireless the Cyprus police who arrived there very shortly afterwards and commenced investigating into the matter.

The car was parked outside the house of a certain Andreas Tsikkos and a search started in order to find out to whom the car belonged ; but nobody in the neighbourhood seemed to know ; and Tsikkos was not at home.

On a rubber mat on the floor of the car, at the side of the front passenger's seat, there was found a newspaper ; both the mat and the newspaper were wet and smelling of kerosene ; and it is quite significant that there was a smell of kerosene in the shop after the fire there had been extinguished.

The police noticed a person hiding in the hen-coop in the yard of the house of Tsikkos. That person turned out to be the appellant, who admitted being the owner of the car. When he was asked what he was doing there he replied : " It is a secret ". On being told about the mat and the newspaper which were found in his car smelling of kerosene, he admitted possession of the mat and denied possession of the newspaper ; he said that he could neither give any explanation as to how the newspaper was found in his car nor as to why both the said articles smelled of kerosene. He denied any connection with the arson.

That same morning, at about 2.25 a.m., he gave a statement to the police stating his movements in a manner setting up an alibi ; he denied once again any guilt.

The appellant, at the trial, did not give evidence on oath when called upon to make his defence, but he made a statement from the dock giving an explanation as to why he had gone to the house of Tsikkos, which he had not previously mentioned in his statement to the police : He said that he had gone there in order to deliver to Tsikkos a revolver and ammunition which he possessed and which he had decided to hand over to the authorities ; and he stated, in this respect, that he knew that Tsikkos had connections with the Information Service of the police.

He called evidence in an effort to substantiate his alibi and to explain the presence of the kerosene smelling mat and newspaper in his car.

The Assize Court rejected as untrue such evidence and on the totality of the case before it found the appellant guilty as charged.

It is correct that by far the greatest extent of the damage was caused to the contents of the shop—as charged in count 2, under section 319 of the Criminal Code—but as some damage was caused by the fire to the shop window, which is part of a building, the conviction on count 1, under section 315 (*a*) of the Criminal Code, was open to the trial Court.

Much reliance was placed by appellant's learned counsel, both at the trial and at the hearing of the appeal, on the fact that the car of the appellant is a " Renault 8 " model and not a " Renault 10 " model, which appeared to be the model of the Renault car which was seen leaving the scene of the crime and was chased by the RAF policemen.

In our opinion the issue regarding the exact model of the off-white coloured Renault car which was seen leaving the scene of the crime, driven by the at that time as yet unidentified culprit, is only an aspect of the wider issue of whether or not the appellant is the culprit ; if his off-white coloured Renault car, which was traced soon after the arson, in the already described circumstances, is the car which was seen leaving the scene of the crime then this is a factor pointing clearly to the identification of the appellant as the culprit.

A lot of detailed argument has been advanced regarding the similarities and dissimilarities between the Renault models in question and, in our desire to go into the matter fully, we inspected and examined ourselves, in the presence and with the assistance of counsel, such models. We eventually reached the view that the differences between the said models, when seen mainly from the rear—as the car of the culprit was seen when leaving the shop and during the chase by the RAF police—are not such as to lead to the exclusion of a *bona fide* erroneous impression regarding the exact model of Renault car in which the culprit drove away.

On the totality of all relevant considerations, to the principal of which we have referred earlier on in this judgment, we are satisfied that, notwithstanding such an erroneous impression, the trial Court properly came to the conclusion, with the certainty beyond any reasonable doubt required for a conviction in a criminal case, that the Renault car of the appellant traced in Ayia Phyla village was the one seen driven away by the culprit and that such culprit was the appellant, who never denied having just driven that car to where it was found.

We have, indeed, not been persuaded that the conclusions arrived at by the trial Court as to the credibility or not of material witnesses were incorrect ; nor that the Court's reasoning upon which it decided the crucial issue of the identification of the car of the appellant as being the car seen driven away by the culprit was not supported by sufficient material rendering it good and valid reasoning. In a case such as the present one the burden lay on the appellant to satisfy this Court that the verdict of the Court below should be upset and such burden has not, in our view, been discharged.

Coming now to the appeal against sentence, it is not in dispute that the accused is twenty-five years of age and with an unblemished past ; at the time of the crime he had a very good job with the Cyprus Telecommunications Authority which he stands the risk of losing ; he is, also, engaged to be married.

With all these in mind we feel, in the light of the correct principles governing the approach to the question of sentence, that the proper sentence should not have been such a long term of imprisonment as four years, but a much shorter one coupled with an order for compensation for the damage caused, which amounts to £640. The appellant is not so much in need of reform as to hold that a sentence of four years' imprisonment is not manifestly excessive in the light of all relevant considerations ; and the sense of retribution for the offences committed can be satisfied by a much shorter sentence and the payment of full compensation.

We have, therefore, decided to reduce the sentences in respect of both counts to eighteen months' imprisonment, starting and running concurrently from the date of conviction ; and to make an order for compensation for £640, failing payment of which the appellant should serve another year's imprisonment.

The appeal against conviction is dismissed and the appeal against sentence is allowed and the sentence varied accordingly.

Appeal against conviction dismissed. Appeal against sentence allowed.