

1971

May 8

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GEORGHIOS
KYPRIANOU

v.

THE REPUBLIC

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

GEORGHIOS KYPRIANOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 3229*).

Sentence—Homicide contrary to section 205 of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1962 (Law No. 3 of 1962)—Fourteen years' imprisonment—No sufficient weight given to the mental condition of the Appellant—Sentence reduced on this ground on appeal to one of ten years' imprisonment.

Homicide—See supra.

Appeal—Sentence—Appeal against sentence—Primary responsibility for assessing sentence lies with the trial Courts—Principles upon which the Court of Appeal will interfere with sentences—Restated.

Per curiam: We wish to draw the attention of the appropriate authorities that should the Appellant, who no doubt will be under continuous observation and appropriate treatment, appear, at the end of the sentence to be a menace to society, if let loose, there are ample powers under the law to keep him under detention otherwise, so as not to expose innocent people to any mental aberration of his that may still exist.

The Appellant was convicted by the trial Court on a charge of homicide contrary to section 205 of the Criminal Code, 154, as amended by the Criminal Code (Amendment) Law, 1962 (Law No. 3 of 1962) and sentenced to fourteen years' imprisonment. On appeal the sentence was reduced to one of ten years' imprisonment on the ground that the trial Court failed to give the appropriate weight to the mental condition of the Appellant.

The facts sufficiently appear in the judgment of the Court.

Cases referred to:

Iroas v. The Republic (1966) 2 C.L.R. 116, at p. 118.

Appeal against sentence.

1971
May 8

—
GEORGHIOS
KYPRIANOU
v.
THE REPUBLIC

Appeal against sentence by Georghios Kyprianou who was convicted on the 18th January, 1971 at the Assize Court of Larnaca (Criminal Case No. 2744/70) on one count of the offence of homicide contrary to section 205 of the Criminal Code, Cap. 154 (as amended by Law 3/62) and was sentenced by Georghiou, P.D.C., Orphanides and A. Demetriou, D.JJ. to 14 years' imprisonment.

Z. Katsouris, for the Appellant.

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

The judgment of the Court was delivered by:

TRIANAFYLLIDES, P.: In this case the Appellant appeals against the sentence of fourteen years' imprisonment imposed on him by the Larnaca Assizes, after he pleaded guilty to a charge of homicide, contrary to section 205 of the Criminal Code (Cap. 154), as amended by the Criminal Code (Amendment) Law, 1962 (3/62).

The particulars of the offence being that on the 1st June, 1970, at a locality in Kornos village, on the Nicosia-Limassol road, he did cause by an unlawful act the death of one Antonis Demetri Papadopoulou.

The circumstances of the commission of the offence are shortly as follows:—

The accused was in a taxi in Larnaca. The driver stopped at a filling station for petrol; and while he was outside the taxi, closing the petrol tank, the accused seized this opportunity to take control of the taxi and drove it off in the direction of Limassol, in spite of the pleas of the driver to stop.

At that time, the victim, with other labourers, was working on road repairs on the main Limassol-Nicosia road, at the aforesaid locality. While the victim was on the left berm of the road—when one faces towards Limassol—he was hit violently by the taxi, which was being driven on the berm at a terrific speed towards Limassol, and was killed instantly, having been dragged along the road for a considerable distance, as the Appellant did not reduce speed after hitting him.

1971

May 8

—

GEORGHIOS
KYPRIANOU

v.

THE REPUBLIC

Five minutes later the Appellant turned back, and he drove, again at a terrific speed, towards the direction of Nicosia, ignoring all signals to stop. Five or six minutes later he reappeared, driving at a great speed in the opposite direction; and then he turned once more and started driving again towards Nicosia; he was, eventually, arrested near Nicosia, having collided with a stationary car at a police road block.

The Appellant was injured in the collision and he was taken unconscious to the Nicosia General Hospital, where he was detained for treatment. He remained hospitalized, first in Nicosia and then in Larnaca, until the 8th June, 1970.

On the 16th June, 1970, he made a statement to the police saying that he had acted under a sudden impulse, his intention being to kill another one of the persons working at that particular spot, actually the foreman, a certain Constantis Tofettis, because he was saying things against him, annoying his mother-in-law and making advances to his fiancée; and that he had killed the deceased by mistake, while trying to hit his intended victim. He added that he did not know what he was doing after he had killed the deceased, when he was driving up and down the Limassol-Nicosia road.

He produced before the learned trial Judges medical reports showing that he was mentally abnormal both before and after the offence. It is particularly interesting to note that Dr. P. Matsas, who is the specialist in charge of the Psychiatric Institutions at Athalassa, states in his report that he kept the Appellant under observation and he found him to be a mentally abnormal person to such an extent that he had to be taken away from the prison, where he was being kept prior to his trial, and he removed for treatment to the Psychiatric Institutions, where he remained from the 4th September, 1970, until the 1st December, 1970; it was not a mere instance of being taken there for purposes of observation.

The mental condition of the Appellant can be gathered also from what learned counsel, who appeared for the Republic before the Assizes, told the trial Court: Counsel said, *inter alia*, that the accused was a person suffering from irresistible and abnormal jealousy, to the extent that he was distrusting even his own father and father-in-law; therefore, he was trying to convince his fiancée not to have any contact with her own father.

1971
May 8

—
GEORGHIOS
KYPRIANOU

v.

THE REPUBLIC

The Assize Court took, indeed, into account the mental condition of the Appellant, but in our view it did not give sufficient weight to such condition, as one of the several elements to be taken into consideration in assessing sentence.

The primary responsibility for assessing sentence lies with the trial Court, and this Court will not interfere, on appeal, with the sentence as assessed by a trial Court except on one of the accepted grounds, viz. that the trial Court has acted in a manner which is wrong in principle, or that the sentence is manifestly excessive, or that the trial Court has misdirected itself as to the essential facts or as to the law. Useful reference may be made in this respect to the case of *Iroas v. The Republic* (1966) 2 C.L.R. 116, where it is stated in the judgment (at p. 118):—

“ The Court of Appeal will only interfere with a sentence so imposed, if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law; or, that the Court, in considering sentence, allowed itself to be influenced by matter which should not affect the sentence; or, if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case.”

That was a case in which the Court refused to reduce a sentence of twelve years' imprisonment for homicide and where the appeal was based on the fact that the violent conduct of the Appellant was the result of mental strain arising from epilepsy.

But, of course, each case has to be determined on its own merits. In the present case, we are faced with the indisputable fact that the trial Judges failed to give due weight to the mental condition of the Appellant, by describing him as only “a slightly abnormal person”, when it is clear, from the totality of the circumstances, including the medical reports, that he is a person mentally abnormal to a considerable extent. In view of this, we feel that we should interfere in this case and reduce the sentence—without losing sight at all of either the terrible crime which the Appellant has committed or of the need for deterrence and protection of society against persons such as the Appellant and crimes of this nature—to one of ten years' imprisonment from the date of conviction, viz. the 18th January, 1971.

1971

May 8

—

GEORGHIOS

KYPRIANOU

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We wish to draw the attention of the appropriate authorities that should the Appellant, who no doubt will be under continuous observation and appropriate treatment, appear, at the end of the sentence, to be a menace to society, if let loose, there are ample powers under the law to keep him under detention otherwise, so as not to expose innocent people to any mental aberration of his that may still exist.

In the result the appeal is allowed and the sentence is varied accordingly.

Appeal allowed.