[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

CHARALAMBOS MICHAEL KENTAS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3288).

Sentence—Homicide—Fifteen years' imprisonment—Challenged on the ground of misdirection as to the mental state of the Appellant at the time of the commission of the offence—Which was dealt with by the Assize Court on the basis of a certificate issued by a mental specialist who, however, was not called as a witness by such Court—But was called by the Supreme Court in this appeal in order to enable it to assess clearly the position—In the light of such evidence, the basis on which the sentence passed on the Appellant was assessed by the trial Court, viz. *that at the time of the commission of the homicide in question, or shortly before, he was not mentally abnormal, held on appeal not to be the proper one—Court of Appeal reducing sentence into one of ten years' imprisonment on the footing that the offence of homicide was committed whilst the Appellant was labouring under the effect of mental confusion.*

Sentence—It is the duty of the trial Courts imposing sentence to make sure that they do assess it with all material information put before them.

Evidence in criminal cases—On a plea of guilty and regarding, inter alia, *the mental state of the accused—Mental specialist not called as a witness before the trial Court—But called by Court of Appeal in order to enable it to assess properly and clearly the position and decide the issue of the sentence accordingly—See* supra.

Appeal—Mental expert called as a witness by the Court of Appeal—See supra.

Homicide—Sentence—Fifteen years' imprisonment—Reduced on appeal to ten years' imprisonment, in the light of fresh medical evidence—See supra.

The facts of this case sufficiently appear in the judgment of the Court, allowing this appeal against sentence of fifteen years' imprisonment for the offence of homicide under section 205 of the Criminal Code Cap. 154 (as amended); and reducing it into one of ten years' imprisonment.

Appeal against sentence.

Appeal against sentence by Charalambos Michael Kentas who was convicted on the 12th October, 1971 at the Assize Court of Larnaca (Criminal Case No. 4295/71) on one count of the offence of homicide contrary to section 205 of the Criminal Code Cap. 154 (as amended by Law No. 3 of 1962) and was sentenced by Georghiou, P.D.C., Orphanides and S. Demetriou, D.JJ. to fifteen years' imprisonment.

L. Clerides, for the Appellant.

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

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant has appealed against the sentence of fifteen years' imprisonment which was passed on him by an Assize Court in Larnaca after he had pleaded guilty to a count charging him with homicide, contrary to section 205 of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1962 (3/62).

The main ground on which this appeal was argued by learned counsel for the Appellant is that in assessing the sentence the trial Court misdirected itself as to the mental state of the Appellant at the time of the commission of the offence.

As was stated by it in giving its reasons for the sentence, the Assize Court did not find that it could properly draw the inference that at the time of, or shortly before, the commission of the offence the Appellant showed signs of mental abnormality; it based itself on a certificate issued on the 21st June, 1971, by Dr. P. Matsas, the Medical Superintendent of Psychiatric Institutions, who placed the Appellant under observation three days after the homicide, which was committed on the 18th June, 1971.

In his certificate Dr. Matsas stated that the Appellant "presented signs of psychomotor excitement and of mild

confusion with a depressive overlay" and suggested that as the Appellant had been unwilling for three days to accept food he should be kept under observation "for the purpose of ascertaining whether the above-mentioned signs and symptoms are the result of food-deprivation or of psychogenic origin".

The Appellant remained under observation and treatment at the Psychiatric Institutions until he was discharged therefrom on the 28th July, 1971; on the previous day Dr. Matsas issued another certificate stating that the Appellant was not suffering from organic confusion but from a mental confusion the aetiology of which had remained obscure. There followed a further certificate by Dr. Matsas, on the 27th September, 1971, stating that by that time the Appellant "did not show any gross mental abnormality".

Though the main ground on which counsel appearing for the Appellant before the trial Court based his plea in mitigation was the allegedly abnormal mental condition of the Appellant at the time of the offence the trial Judges apparently did not consider it necessary to call as a witness Dr. Matsas in order to elucidate fully the matter of the mental state of the Appellant at the material time. We do think that, in the circumstances of this case, it would have been the better course to have called Dr. Matsas to give evidence; and the trial Court should have adopted such a course although not asked by either side to do so; for it is the duty of a Court imposing sentence to make sure that it assesses it with all material information before it.

We, therefore, decided to call Dr. Matsas as a witness before us and his evidence enabled us to see clearly the position: It now appears that the Appellant, on the 21st June, 1971, was suffering from a state of mental confusion of a psychogenic origin—and not of an organic origin—and that such mental confusion was a temporary mild mental abnormality which prevented the Appellant from being fully orientated regarding times, places, persons and relations between them; Dr. Matsas stated that though this confusion could have been caused by the remorse which the Appellant must have felt after the homicide he could not exclude the possibility that such confusion actually existed at the time of the commission of the crime; and this being a criminal case we are bound to take the view most favourable to the Appellant, viz. that he could have been suffering from the aforesaid mental abnormality at the time of the commission of the offence.

Actually, this view appears to us to be very consistent with the circumstances in which the offence was committed: The victim—a labourer—was having a nap after lunch; some distance away the Appellant and other labourers were also resting. All of a sudden the Appellant approached the victim and hit him violently on the head with a length of pipe, causing him fatal injuries; while doing so he was muttering the words "piano ego pentolira, piano ego pentolira". ("Do I take five-pound notes"). It does not appear that anything happened at the time to provoke the attack by the Appellant or that what he was heard saying originated in any conversation between his victim and himself which had preceded the blows; it is, therefore, quite probable that the Appellant when he committed the crime was suffering from mental confusion which made him relate to that particular time and place events which did not take place there and then, if they happened at all.

In our opinion the basis on which the sentence passed on the Appellant was assessed, viz. that at the time, or shortly before, the commission of the offence the Appellant was not mentally abnormal, was not the proper one; therefore, we have to intervene and assess sentence on the footing that the offence was committed whilst the Appellant was labouring under the effect of mental confusion.

As stressed by learned counsel for the Respondent this is indeed a very serious crime; taking fully into account, in favour of the Appellant, all that has been already said about his mental state we cannot impose on the Appellant anything less than a sentence of ten years' imprisonment as from the date of conviction.

The appeal is allowed and the sentence is reduced accordingly.

Appeal allowed