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NICOS YIANGOU

v.

THE POLICE

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

NICOS YIANGOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No. 3424*).

Sentence—Contradictory statement—Section 113(2) of the Criminal Code, Cap. 154—Three months' imprisonment—Seriousness of the offence—Sentence not manifestly excessive in the circumstances of this case—Even if the Appellant were to be treated as a first offender and notwithstanding the fact that he is a married man and has three minor children.

Appeal against sentence—See supra.

Contradictory statement contrary to section 113(2) of the Criminal Code Cap. 154—Sentence of three months' imprisonment—Upheld on appeal—See further supra.

The facts of this case sufficiently appear in the judgment of the Supreme Court, dismissing this appeal against a sentence of three months' imprisonment for contradictory statement contrary to section 113(2) of the Criminal Code, Cap. 154.

Appeal against sentence.

Appeal against sentence by Nicos Yiangou who was convicted on the 26th January, 1973 at the District Court of Famagusta (Criminal Case No. 9626/72) on one count of the offence of contradictory statement contrary to section 113(2) of the Criminal Code, Cap. 154 and was sentenced by S. Demetriou, D.J. to three months' imprisonment.

A. Panayiotou, for the Appellant.

A. Frangos, Senior Counsel of the Republic with *C. Kyri-
demos*, for the Respondents.

The judgment of the Court was delivered by:

TRIANAFYLLIDES, P.: The Appellant has appealed against the sentence of three months' imprisonment which was imposed on him by the District Court of Famagusta, on the 26th January, 1973, in respect of the offence of making a contradictory statement, contrary to section 113(2) of the Criminal Code, Cap. 154; when charged with such offence he pleaded guilty.

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From the record before us it appears that he made a statement to the police regarding a fight—which he had witnessed—between three brothers, two of whom were the accused in a criminal case before the District Court of Famagusta and one of whom was the complainant; the Appellant by his statement to the police had incriminated both the accused, but when he gave evidence before the District Court he departed from the contents of such statement by insisting that he saw only one of the two accused assaulting the complainant and, as a result, he was declared to be a witness hostile to the prosecution.

The learned trial Judge, in passing sentence upon the Appellant, stressed the importance, as regards the administration of justice, of a provision such as section 113(2) and, consequently, the seriousness of the offence to which the Appellant pleaded guilty. We are in full agreement with the Judge in this respect.

It was stated in argument before us that the trial Court appears to have treated as weighing against the Appellant the fact that he had a previous conviction, in 1966, for a crime of not a similar nature as the present one.

It has, also, been urged, in support of this appeal against sentence, that on the day when the Appellant made the contradictory statement he was labouring under mental stress, being in a state of confusion because his wife was ill. We cannot accept that it is at all possible that the Appellant committed the present offence because of his state of mind at the time: If he had, in good faith, made a mistake, due to confusion, while giving evidence, he would not have insisted on his "mistaken" version, when he was—(as no doubt he must have been)—reminded, at the stage when he was declared to be a hostile witness, of the contents of his earlier statement to the police.

We regard the sentence of three months' imprisonment, which was imposed on the Appellant, as not being a manifestly excessive sentence, in the circumstances of this case, even if the

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Appellant were to be treated as a first offender and notwithstanding the fact that he is married and has three minor children; and we might add that we do not think that we can treat the reference to his previous conviction, in 1966, which was made by the trial Judge, as a factor which has materially influenced the passing of a proper sentence in this case.

This appeal is, therefore, dismissed, but in view of the family circumstances of the Appellant, we order that the sentence of three months' imprisonment should run as from the date of conviction, and not from today.

Appeal dismissed.