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

MICHALAKIS ANDREOU IACOVOU AND OTHERS,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos.* 3677, 3678).

Criminal Law—Parties to offences—Section 20 *of the Criminal Code Cap.* 154—*Sentence—Stealing by clerk—Section* 268 *of Cap.* 154—*Persons, not being themselves clerks of the complainant, aiding or abetting or counselling or procuring commission of offence under the said section* 268—*Liable to be convicted and punished thereunder in the same way as the principal offender—And not under section* 262—*Common law.*

Criminal Law—Sentence—Stealing by clerk—Sections 268 *and* 20 *of the Criminal Code, Cap.* 154—*Appellant* 19 *years old—Badly in need of reform—Need to deter others—Seriousness of offence—Sentence of* 4 *years' imprisonment neither wrong in principle nor manifestly excessive.*

Criminal Law—Sentence—Stealing by clerk—Sections 268 *and* 20 *of the Criminal Code, Cap.* 154—*Housewife aged* 40—*Married with* 3 *children—Mitigating factors—Fact that appellant a woman not a factor which is, in itself, sufficient to warrant a less serious punishment than is otherwise appropriate—Sentence of* 4 *years' imprisonment though on the severe side, not wrong in principle or manifestly excessive.*

Criminal Law—Sentence—Disparity of sentences as a ground of appeal—Principles applicable—Four years' imprisonment for stealing by clerk—Co-accused receiving two years' imprisonment—No disparity of sentences because of mitigating factors in the case of co-accused and the fact that sentences passed on appellants are, in themselves, definitely not manifestly excessive.

Criminal Law—Sentence—Assessment—Considerations—Role of offenders in the planning or commission of offence and not only the part played in the actual commission of it—Mitigating factors—Remorse or giving assistance to Police.

Criminal Law—Sentence—Imprisonment—Young offenders—Whether sentence of imprisonment to be avoided.

Criminal Code, Cap. 154—*Section* 268—*Not merely a punishment prescribing section but one creating a separate offence.*

Parties to offences—Aiding or abetting—Section 20 *of Cap.* 154—*Sentence.*

The appellants were convicted of the offence of conspriracy to commit a felony, namely to steal from Louis Tourist Agency, contrary to section 371, 255 and 268 of the Criminal Code, Cap. 154 and of the offence of stealing by a clerk, contrary to sections 255, 268 and 20 of Cap. 154, and were each sentenced to concurrent terms of four years' imprisonment. The stealing involved an amount of C£7,000, which has been stolen in complicity with accused 1 at the trial, who at the material time was a person in the employment of Louis Tourist Agency. Accused 1 pleaded guilty during the trial to the offences of fraudulent false accounting and of stealing by a clerk and she was sentenced to concurrent terms of two years' imprisonment.

Upon appeal against sentence counsel for the appellant contended (a) that the appellants not being themselves in the employment of Louis Tourist Agency, as was accused 1, could not have been found guilty of the offence of stealing by a clerk, under section 268 of Cap. 154, in conjunction with the provisions of section 20 of Cap. 154; and that they should have been convicted and punished only under sections 255 and 262 of Cap. 154, with the result that the maximum sentence of imprisonment, which could have been imposed on them, was only three years' imprisonment, and not seven years' imprisonment, under section 268; consequently, in any event, they could not have been sentenced by the trial Court to four years' imprisonment.

(b) That there existed a glaring disparity between the sentences passed on the appellants and the sentence passed on accused 1 at the trial.

Appellant 1 was the son of appellant 2 and at the time of the trial he was nineteen years' old. He was a first offender.

Appellant 2 was a married woman, who, in addition to appellant 1, had two other children; at the time of the trial she was forty years old. She was a housewife. In the past she has

done commendable social welfare work and she has been active in public life in many ways.

Held, (I) with regard to contention (a) above.

(1)(a) Section 268 of Cap. 154 is not merely a punishment prescribing section, but one creating a separate offence. The principles of the Common Law which have been given statutory effect by our section 20 make it possible for a person to be convicted for having aided and abetted the commission of an offence which can be committed by another person, as a principal only in a certain capacity (see *Gough* v. *Rees*, 29 Cox C.C. 74); and a person may, at one and the same time, aid, abet and, also, procure the commission of an offence (see the *Gough* case, *supra*, at p. 79).

1(b) When section 20 is read together with section 268, and it is borne, also, in mind that section 268 creates a separate offence, it is clear that those who aid and abet or counsel or procure, as the case may be, the commission of the offence under section 268, are liable to be convicted and punished under it in the same manner as the principal offender. The findings of the trial Court leave no room for doubt that the appellants did, actually, aid and abet, as well as procured and councelled, the commission of the offence under section 268; so, they were guite properly deemed in Law, by virtue of section 20, to have committed the offence under section 268 and they were rightly sentenced under it, and not under section 262.

Held, (II) with regard to the sentence passed on appellant 1:

Though the Courts try to avoid as much as possible sentencing young offenders to long terms of imprisonment, sometimes such a course is really inevitable (see *Menelaou and Others* v. *The Republic* (1971) 2 C.L.R. 146 at p. 149). In the light of the seriousness of the crime committed by appellant 1, which can scarcely be underrated; and of the fact that his plight is clearly due to his own irresponsible way of life and that he is a person who is badly in need of reform; and of the fact that it is, also, really necessary to deter others from acting as this appellant has done, that is from inciting persons holding fiduciary positions to steal money entrusted to them by their employers, the sentence passed upon this appellant is not wrong in principle or manifestly excessive.

Held, (III) with regard to the sentence passed on appellant 2:

Even though this appellant has, to a certain extent, our sym-

pathy, especially because she may have found herself in this predicament as the mother of her unscrupulous son, appellant 1, we cannot, in the proper exercise of our powers in appeals against sentence intervene in her favour; the sentence imposed by the trial Court can be considered to be, in so far as this appellant is concerned, on the severe side, but it is certainly not wrong in principle or manifestly excessive. Nor is the fact that appellant 2 is a woman a factor which is, in itself, sufficient to warrant a less serious punishment than is otherwise appropriate for her criminal conduct (see, *inter alia*, Thomas on Principles of Sentencing, p. 66).

Held, (IV) with regard to the ground of disparity between the sentences:

(After dealing with the principle of disparity of sentences, as a ground of appeal—vide pp. 128–131 *post*).

Bearing in mind that in dealing with culpability for the commission of an offence, in which more than one person is involved, a Court has to consider, too, the role of the offenders in relation to the planning or instigation of the offence and not only the part played in the actual commission of it (see Thomas on Principles of Sentencing p. 65); and that differentiation in sentencing may be such as to reflect the presence of a mitigating factor, as for example remorse or giving assistance to the police; and that in the present case, we cannot but regard even the belated plea of guilty by accused 1 as a sign of remorse; and that, moreover, she has assisted in securing the conviction of the two appellants and as has been pointed out in *Loizou* v. *The Republic* (1971) 2 C.L.R. 196, encouragement should be given to people to assist the police in the detection of crimes, and bearing in mind also, the principles applicable to disparity of sentences, as a ground of appeal (see pp. 128–131 *post*) and especially, on the one hand the aforementioned mitigating factors in the case of accused 1 as well as any aggravating elements against her, and on the other hand the fact that the sentences passed on the appellants are, in themselves, definitely not manifestly excessive, we do not feel that there has been established to our satisfaction that there exists such disparity of sentences as between the appellants and accused 1 so as to enable us to intervene in favour of the appellants on the basis of a proper application of the relevant principle.

Appeals dismissed.

Cases referred to:

Soteriou v. *The Republic*, 1962 C.L.R. 188 at pp. 194, 195;

Pefkos and Others v. *The Republic*, 1961 C.L.R. 340 at p. 365;

Gough v. *Rees*, 29 Cox C.C. 74;

Morris v. *Tolman* [1923] 1 K.B. 166;

Director of Public Prosecutions v. *Morgan* [1975] 2 All E.R. 347 at p. 353;

Menelaou and Others v. *The Republic* (1971) 2 C.L.R. 146 at p. 149;

Williams, 37 Cr. App. R. 71;

Loizou v. *The Republic* (1971) 2 C.L.R. 196;

R. v. *Robson and East* [1970] Crim. L.R. 354 at p. 355;

Coe [1969] 53 Cr. App. R. 66;

R. v. *Brown* [1975] Crim. L.R. 177;

Nicolaou v. *The Police* (1969) 2 C.L.R. 120 at pp. 122–123.

Appeal against sentence.

Appeal against sentence by Michalakis Andreou Iacovou and another who were convicted on the 1st December, 1975 at the Assize Court of Nicosia (Criminal Case No. 11755/75) on two counts of the offences of conspiracy to commit a felony, contrary to sections 371, 255 and 268 of the Criminal Code, Cap. 154 and of stealing by clerk contrary to sections 255, 268 and 20 of Cap. 154 and were sentenced by Demetriades P.D.C. Kourris, S.D.J. and Nikitas, D.J. to four years' imprisonment on each count the sentences to run concurrently.

A. Markides, for the appellants.

A. Evangelou with *A. M. Angelides*, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:–

TRIANTAFYLLIDES, P.: The two appellants—who were, respectively, accused 2 and 3 at their trial before the Nicosia Assizes—were convicted on December 1, 1975, of the offence of conspiracy to commit a felony, namely to steal from Louis Tourist Agency, contrary to sections 371, 255 and 268 of the Criminal Code, 154, and of the offence of stealing by a clerk, contrary to sections 255, 268 and 20 of Cap. 154.

The stealing involved, allegedly, an amount of approximately

C£15,900, which has been stolen, according to the particulars of the relevant count, between September 1, 1973, and August 30, 1974, in complicity with accused 1 at the trial, who was, at the material time, a person in the employment of Louis Tourist Agency.

Accused 1—Ioanna (or Anna) Ioannou—pleaded guilty during the trial to the offences of fraudulent false accounting, contrary to section 313(c) of Cap. 154, and of stealing by a clerk (in respect of which the appellants were convicted, too) and she was sentenced to concurrent terms of two years' imprisonment; she, also, gave evidence at the trial as a witness against the appellants and there is no doubt that her evidence was of importance in convicting them.

When the appellants were convicted the trial Court found that, as regards the count for the offence of stealing by a clerk, there was no evidence that they were involved in the stealing of the whole amount of C£15,900, but only of an amount of about C£7,000.

Both the appellants were sentenced to concurrent terms of four years' imprisonment as from December 3, 1975.

As the sentences passed upon them are concurrent it is not really necessary for us to deal further with the point as to whether it was proper to sentence them, too, on the conspiracy count once the offence which they had conspired to commit was actually consummated and they were sentenced in respect of it.

During the hearing of these appeals both appellants abandoned their appeals against conviction and they were dismissed accordingly. We are, therefore, concerned only with their appeals against sentence.

Appellant 1 is the son of appellant 2; at the time of the trial he was nineteen years old. Appellant 2 is a married woman, who, in addition to appellant 1, has two other children; at the time of the trial she was forty years old. Accused 1 at the trial was employed for practically the whole of the material period as the cashier of Louis Tourist Agency; she was twenty-four years old at the time of the trial.

The trial Court accepted the version of accused 1 that she had been forced to steal money from her employers, Louis Tourist Agency, in order to give it to appellants 1 and 2 and

to friends of appellant 1, because the two appellants were threatening to expose her to her fiancé and his family as regards certain events in her past life, namely that she had had a liaison with another man and, as a result of it, she had had an abortion. The trial Court found that the extortion of money from Anna by the appellants was the result of a scheme well prepared by them and that they knew well that, as she did not have money of her own, she would have to steal it from her employers.

Learned counsel for the appellants has strived hard to persuade us that it was wrong to find the appellants guilty of the offence of stealing by a clerk, under section 268 of Cap. 154 in conjunction with the provisions of section 20 of Cap. 154; in other words, that they, not being themselves in the employment of Louis Tourist Agency, as was accused 1, could not have been found guilty of the offence of stealing by a clerk, as she was found; counsel submitted that his clients should have been convicted and punished only under sections 255 and 262 of Cap. 154, with the result that the maximum sentence of imprisonment, which could have been imposed on them, was only three years' imprisonment, and not seven years' imprisonment, under section 268; consequently, in any event, they could not have been sentenced by the trial Court to four years' imprisonment.

Section 20 reads as follows:-

"20. When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:-

"(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids or abets another person in committing the offence;

(d) any person who counsels or procures any other person to commit the offence.

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission".

Section 255 reads as follows:-

"255. (1) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof.

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.

(2)(a) The expression 'takes' includes obtaining the possession:-

(i) by any trick;

(ii) by intimidation;

(iii) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained;

(iv) by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps;

(b) the expression 'carries away' includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached.

(c) the expression 'owner' includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

(3) Everything which has value and is the property of any person, and if adhering to the realty then after severance therefrom, is capable of being stolen".

Section 262 reads as follows:-

"262. Any person who steals anything capable of being stolen is guilty of the felony termed theft, and is liable, unless, owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for three years".

Section 268 reads as follows:-

"268. If the offender is a clerk or servant and the thing stolen is the propety of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years".

We have not been able to agree with the submission in question of counsel for the appellants:

In the first place, it is quite clear, on the basis of previous decisions of this Court, one of which is that in *Soteriou* v. *The Republic*, 1962 C.L.R. 188, 194, that section 268 is not merely a punishment prescribing section, but one creating a separate offence; in this respect Vassiliades J., as he then was, said in the *Soteriou* case the following (at pp. 194, 195):-

" As regards the first part of the submission, to the effect that sections 262 and 267 of our Code, merely provide for punishment, one may observe at once, that both sections refer to the offence of stealing defined in section 255. But that cannot mean that without the definition-section, the offence of stealing is not provided for.

Reading section 262, or section 267 in its context, one would only have to attach a meaning to the words 'any person who steals' in the former section, or the corresponding expressions in the latter, and one would have both offence and punishment in the section. And surely the Courts applying the law codified in the Cyprus Criminal Code, would be able to give a meaning to these words or expressions, even without section 255.

Once, however, section 255 is there, opening the part of the Code covering 'Offences Relating to Property', as a

definition-section, one does not have to look for the meaning; the Court applying the Code, must give to these words and expressions, the meaning provided for them or amplified and settled, in the definition-section.

.....

The opening words in sections 267, 268 and 269 'If the offender is' ..... in the context where these sections occur, clearly mean, in my view:- If the person who steals within the meaning of section 255, is a person employed ..... etc.- Read in this way, each of these sections fully covers the offence stated in the margin".

Counsel for the appellants, in trying to save the appellants from punishment under section 268 in conjunction with section 20, has, also, invited us to construe section 20 in a manner which is, in effect, rather different from what the corresponding legal position appears to be in England. It is, however, well settled that the Common Law of England has been adopted and codified, in this respect, in our own law; in *Pefkos and Others* v. *The Republic*, 1961 C.L.R. 340, Vassiliades J., as he then was, stated the following (at p. 365):-

" Ordinary good sense, concerned with public safety, and the suppression of crime, would clearly, I think, have it that way; the Common Law, originating in good common sense, has it that way; and our codified law in the form of sections 20 and 21 of the Criminal Code, emanating from the Common Law, provides that each of such persons is deemed to have committed the offence, actually committed by his mate."

Counsel for the appellants has argued, moreover, that in the Larceny Act, 1916, in England, there is a specific provision (section 35) which provides for a legal situation such as the one on which there were based the appellants' convictions in the present case, whereas, on the contrary, no such provision exists in Cap. 154. As it appears, however, from Russell on Crime, 12th ed., vol. 2, p. 1031, section 35 of the Larceny Act, 1916, is a reproduction of the Accessories and Abettors Act, 1861, in England (see Halsbury's Statutes, 2nd ed., vol. 5, p. 724) and the latter Act is nothing more than a codification of the relevant principles of the Common Law as they evolved over the years (see Russell on Crime, 12th ed., vol. 1, p. 133).

It was contended by counsel for the appellants that it was

impossible in law to convict and punish persons, such as the appellants, in respect of the offence of stealing as a clerk, when they did not possess actually the requisite de facto or de jure capacity for committing such an offence.

From Glanville Williams on Criminal Law, 2nd ed., "The General Part", p. 387, para. 129, it is to be clearly derived that the principles of the Common Law which have been given statutory effect by our section 20 make it possible for a person to be convicted for having aided and abetted the commission of an offence which can be committed by another person, as a principal, only in a certain capacity; in *Gough* v. *Rees*, 29 Cox C.C. 74, the owner of an omnibus was convicted of aiding and abetting the commission of an offence contrary to section 13 of the Railway Passenger Duty Act, 1842, which related only to the driver, conductor or guard of an omnibus.

Of course, we do have in mind that it is possible to have a statute so worded as to make it impossible for somebody to aid and abet the commission of an offence under it by the principal offender; and such was the position in *Morris* v. *Tolman*, [1923] 1 K.B. 166, which involved the application of subsection 3 of section 8 of the Roads Act, 1920, in England; but, in view of the provisions of section 20 of Cap. 154, we are not faced with such a situation in the present instance; and it might be added, too, that the *Morris* case, *supra*, was referred to and distinguished in the *Gough* case, *supra* (at p. 79).

Another English case to which we could usefully refer is that of *Director of Public Prosecutions* v. *Morgan*, [1975] 2 All E.R. 347, where (as it appears at p. 353) a husband who, in law, could not be convicted of the offence of rape against his wife, was found guilty of aiding and abetting the commission of rape by others against her; the following were stated by Lord Hailsham of St. Marylebone (at p. 353):-

> " The four appellants were all convicted at the Stafford Crown Court of various offences connected with alleged rapes on the person of Daphne Ethel Morgan of whom the first appellant is, or at the material time was, the husband. The second, third and fourth appellants were convicted each of a principal offence against Mrs. Morgan, and each of aiding and abetting the principal offences alleged to have been committed by each of the other two. The appellant Morgan, who also had connection with his

wife allegedly without her consent as part of the same series of events, was not charged with rape, the prosecution evidently accepting and applying the ancient common law doctrine that a husband cannot be guilty of raping his own wife. Morgan was therefore charged with and convicted of aiding and abetting the rapes alleged to have been committed by the other three."

Counsel for the appellants has argued that the appellants were not found to be aidors and abettors of accused 1 in the theft of her employers' money, but only, as it is stated in the judgment of the trial Court, that they "procured" her, by threats, to commit such theft. We do not regard this particular part of the judgment of the trial Court as identifying with precision the specific part of section 20 under which the appellants were found to be connected with the offence committed by accused 1 contrary to section 268; what such part conveys is that the trial Court found that the appellants put accused 1 up to commit the theft in question; and, in any case, a person may, at one and the same time, aid, abet and, also, procure the commission of an offence (see, *inter alia*, the *Gough* case, *supra*, at p. 79).

In our opinion, when section 20 is read together with section 268, and it is borne, also, in mind that section 268 creates a separate offence, it is clear that those who aid and abet or counsel or procure, as the case may be, the commission of the offence under section 268, are liable to be convicted and punished under it in the same manner as the principal offender. The findings of the trial Court leave no room for doubt that the appellants did, actually, aid and abet, as well as procured and counselled, the commission of the offence under section 268; so, they were quite properly deemed in law, by virtue of section 20, to have committed the offence under section 268 and they were rightly sentenced under it, and not under section 262; and this, in our view, accords with the proper object of the law which is to discourage anyone from aiding or procuring another person who is in a fiduciary position, such as that of accused 1, to commit an offence contrary to section 268.

We come now to deal with the sentences which were passed upon the appellants; we shall start with the case of appellant 1:

It has been urged upon us on his behalf that he is a person of very young age, that he is a first offender, and that it was

accused 1, Anna, who was the principal offender and who stole much more than the sum of C£7,000 in respect of which the appellants were convicted.

The Courts try to avoid as much as possible sentencing young offenders to long terms of imprisonment, but sometimes such a course is really inevitable; in *Menelaou and Others* v. *The Republic*, (1971) 2 C.L.R. 146, Josephides J. said (at p. 149):-

> " The fact remains that this was a well-planned and horrible crime committed by three young men who brutally assaulted an old and unprotected woman of 78 years of age, who was living all by herself. And although, in principle, the Courts should, as far as possible, avoid sending to prison young offenders of the age of the appellants, we think that (subject to our observations in the concluding paragraph of this judgment) the Court would have failed in their duty to protect society and to reform the offenders if they had not imposed sentences of imprisonment."

In the *Menelaou* case the appellants, though they were all young persons, were sentenced to terms of imprisonment ranging from seven years to five years for the offence of attempted robbery.

The seriousness of the crime committed by appellant 1 can scarcely be underrated; his plight is clearly due to his own irresponsible way of life; he is a person who is badly in need of reform; and it is, also, really necessary to deter others from acting as appellant 1 has done, that is from inciting persons holding fiduciary positions to steal money entrusted to them by their employers.

In the light of the above considerations we do not think that the sentence passed upon this appellant is either wrong in principle or manifestly excessive.

We come, next, to consider the sentence which was passed upon appellant 2:

It has been submitted on her behalf that her complicity related to only C£2,100 out of the total of the stolen money and that the trial Court wrongly found that she was involved in the theft of about C£7,000.

We think that this is an erroneous approach; the offence of

the theft of the sum of C£7,000 was committed jointly by the two appellants and accused 1 and there existed a common design as regards the conduct of the two appellants; so whatever was taken by one of them must be deemed as having been taken by, or on behalf, of the other, as well.

Appellant 2 is a housewife; she has done in the past commendable social welfare work and she has been active in public life in many ways. We do take such things into account in her favour; but, on the other hand, she was, by far, the most mature person out of the two appellants and, therefore, she ought not to have allowed herself to participate in a scheme making accused 1 steal money from her employers.

So, though appellant 2 has, to a certain extent, our sympathy, especially because she may have found herself in this predicament as the mother of her unscrupulous son, appellant 1, we cannot, in the proper exercise of our powers in appeals against sentence (see, *inter alia*, the *Menelaou* case, *supra*), intervene in her favour; the sentence imposed by the trial Court can be considered to be, in so far as this appellant is concerned, on the severe side, but it is certainly not wrong in principle or manifestly excessive.

Nor is the fact that appellant 2 is a woman a factor which is, in itself, sufficient to warrant a less serious punishment than is otherwise appropriate for her criminal conduct (see Thomas on Principles of Sentencing, p. 66, and the case of *Williams*, 37 Cr. App. R. 71).

The last main submission of counsel for the appellants with which we shall deal is that there exists disparity of sentences; he has argued that there exists a glaring disparity between the sentences passed on the appellants and the sentence passed on accused 1, Anna, whom he described as the principal culprit; he stressed that it was Anna who devised the method enabling her to steal money from her employers by falsifying their accounts, and, he pointed out, too, that she gave stolen money to other persons, also, apart from the two appellants. He argued that Anna must have begun stealing the money of her employers long before appellant 2 started threatening her in order to induce her to do so, because it was found by the trial Court that appellant 2 started threatening Anna only as from May 1974 onwards, whereas Anna began stealing money from her employers as far back as the autumn of 1973.

We have duly taken into account all the above submissions of counsel for the appellants; and it is true that at first sight the impression might be created that there exists some disparity of sentences. But there have to be borne in mind, too, certain other basic considerations: One of them is that in dealing with culpability for the commission of an offence, in which more than one person is involved, a Court has to consider, too, the role of the offenders in relation to the planning or instigation of the offence and not only the part played in the actual commission of it (see Thomas on Principles of Sentencing, p. 65).

Also, in the said textbook it is pointed out (at p. 67) that differentiation in sentencing may be such as to reflect the presence of a mitigating factor, as for example remorse or giving assistance to the police; and, in the present case, we cannot but regard even the belated plea of guilty by accused 1, Anna, as a sign of remorse; moreover, she has assisted in securing the conviction of the two appellants; and as has been pointed out in *Loizou* v. *The Republic*, (1971) 2 C.L.R. 196, encouragement should be given to people to assist the police in the detection of crimes.

The principle of disparity of sentences, as a ground of appeal, is explained by Thomas, *supra* (at pp. 69–70), as follows:–

> " The principal concern of the Court in determining an appeal against sentence by one of two or more joint offenders who have been treated in the same manner is with the propriety of the sentence passed on him as an individual—whether it is excessive in proportion to the offence, whether proper allowance has been made for mitigating factors, and so forth. Where the Court finds that the trial Judge has failed to give proper weight to the fact that the particular appellant played only a minor role in the offence, or has ignored some relevant mitigating factor, it will normally reduce the appellant's sentence accordingly, as many of the cases cited in this section illustrate. A more difficult problem arises when the appellant is the one who has received the most severe sentence, and complains that there is no proper ground for the distinction between himself and his co-defendants. The Court may take the view that his sentence is excessive when considered on its own merits, and reduce it on the ground, but a dilemma arises when the Court is of the opinion that the sentence passed on the appellant is correct and those passed on his

co-defendants are inadequate. To reduce the sentence passed on the appellant would result in a further incorrect sentence. In the face of this situation the Court will not normally reduce the longer sentence unless the disparity is particularly gross. The position of the Court was stated in these terms:

'This Court has said on many occasions that the fact that one prisoner has got a sentence which was ridiculously low ..... is no ground for reducing a sentence of a man who has been properly sentenced. In the ordinary way this Court would not interfere in such a case as this with a sentence of nine months. However, there are cases, and in the opinion of this Court in this one, in which the disparity is so great that really something ought to be done lest the man will suffer for the rest of his life with a really justified grievance.' The appellant, a man of good character, was sentenced to nine months for receiving nine thousand cigarettes; the thief had been fined £20. The Court reduced the appellant's sentence to allow his discharge the following day[1]. In another case the Court reduced a sentence of imprisonment imposed on a man of good character convicted of receiving stolen pipes; the thief and another receiver were tried summarily and fined £25 each. The Court stated that 'the mere fact that one co-prisoner has got a lenient sentence does not mean that this Court in every case will reduce the other prisoner's sentence to the same or an equivalent amount. But at the same time the difference may be in certain cases so extreme that justice would certainly not seem to be done, and the prisoner with the higher sentence would suffer all his life under a grievance so that really this Court has to interfere'[2]."

In England the basis of the above principle has been expounded in a number of cases: In the case of *Coe*, 53 Cr. App. R. 66, the following were stated by Lord Parker C.J. (at p. 71):-

" The Court on many occasions, and it has been referred to several cases, has reduced a sentence to bring it more

1. *Jeavons* 8.10.64, 1907/64, [1964] Crim. L.R. 836. For an earlier statement to similar effect, see *Richards* [1955] 39 Cr. App. R. 191.

2. *Reeves* 19.11.63, 1833/63, [1964] Crim. L.R. 67; see also *Williams* 21.10.63, 1676/63, [1963] Crim. L.R. 865; see also *Johns and Monks* 27.4.67, 1239/67; *Brown and Brown* 3.3.64, 2145/63, [1964] Crim. L.R. 485; *McCullock* 23.5.66, 3118/65; *Soffiet* 5.4.68, 1249/68, [1968] Crim. L.R. 622.

in line to the sentence imposed on a co-accused; it is something that this Court tries to do in the general run of cases on the basis that only thereby can a sense of grievance be averted. But there is no principle of law that the sentences must strictly compare, and as Lord Goddard C.J. said, in giving the judgment of the Court, in RICHARDS, [1955] 39 Cr. App. R. 191, at p. 192 the fact that one of two prisoners jointly indicted has received too short a sentence is not a ground on which this Court necessarily interferes with a longer sentence passed on the other. The Court does in general seek to ensure that sentences as far as possible favourably compare one with another, but they are not bound to do so and when one finds, as one does in the present case, that the sentence imposed on the co-accused is a wholly inadequate sentence, this Court can see no ground whatever for making the larger sentence strictly compare with the lower one;"

In *R.* v. *Robson and East*, [1970] Crim. L.R. 354, 355, it was stated that "the Court was unable to accept as an accurate statement of its attitude that it is 'more important that sentences should be proportionate to one another than that they should be proportionate to guilt': Smith and Hogan, Criminal Law (2nd ed.), p. 10. The true principle is expressed in *Coe* [1969] 53 Cr. App. R. 66."

More recently in *R.* v. *Brown*, [1975] Crim. L.R. 177, it was stressed that the correct basis of the principle in question is to avoid a legitimate sense of grievance on the part of a person sentenced due to disparity of sentences.

Our Supreme Court has adopted the same approach for the same reasons; for example, in *Nicolaou* v. *The Police*, (1969) 2 C.L.R. 120, Vassiliades, P. said (at pp. 122–123):–

" It is true that there is considerable difference in the past record of these two young men. On the other hand, their past is only an incidental matter in the case. The substance of the matter for adjudication lies in their respective conduct in the commission of the offence. We think that, in the circumstances, for the commission of the same offence (where, perhaps, the part played by the other person is even more blameworthy than the part played by the appellant now before us) the disparity in their respective sentences is unsatisfactory; and is, we think, offensive to the

common sense of justice, so important to maintain in the minds and hearts of all people; especially the people who exhibit a tendency to break the law. Unless they have faith and confidence that in the hands of the Courts they will meet with justice and receive the consequences of their conduct upon that footing, neither the sentences they receive can have the proper effect on their mind, nor can the Courts be of much help to them in reforming their life.

We also have to bear in mind the principle of equality between all persons before the law which is generally accepted, but is not always apparent in every day life. If this young man and his family circle, as well as those who may have taken an interest in his case, will look upon the matter intelligently, they will not be able to find the expected equality of treatment, in the case of these two young men. All these considerations have made this simple case (which in itself presents no difficulty whatsoever) a matter requiring special and exceptional treatment."

Bearing all the above in mind, and, especially, on the one hand the aforementioned mitigating factors in the case of accused 1 as well as any aggravating elements against her, and on the other hand the fact that the sentences passed on the appellants are, in themselves, definitely not manifestly excessive, we do not feel that there has been established to our satisfaction that there exists such disparity of sentences as between the appellants and accused 1 so as to enable us to intervene in favour of the appellants on the basis of a proper application of the relevant principle.

For all the foregoing reasons we find that these appeals have to be dismissed.

Appeals dismissed.