ΔΙΚΑΣΤΑΙ: (Λ. ΛΟΙΖΟΥ, Α. ΛΟΙΖΟΥ, ΜΑΛΑΧΤΟΣ)

ΓΕΩΡΓΙΟΣ ΧΑΤΖΗΝΙΚΟΛΑΟΥ,

'Εφεσείων,

κατά

ΑΣΤΥΝΟΜΙΑΣ,

'Εφεσιβλήτου.

(Ποινική "Εφεσις ύπ' άρ. 3687).

Ποινικόν Δίκαιον – Ποινή – Τρίμηνος φυλάκισις διά τό άδίκημα τής δημοσίας προκλήσεως τών κατοίκων είς βιαιοπραγίας έναντίον άλλήλων – "Αρθρον 51Α(Ι) τοῦ Ποινικοῦ Κώδικος, Κεφ. 154 ώς τοῦτο έτροποποιήθη ύπό τοῦ Νόμου 59 τοῦ 1974 – Τό θέμα τής ποινής πρωτίστως θέμα τοῦ Πρωτοδίκου δικαστηρίου – Πότε δύναται νά έπέμβη τό 'Ανώτατον Δικαστήριον – Προηγουμέναι καταδίκαι έφεσείοντος – Σημασία αύτών είς τήν έπιμέτρησιν τής ποινής – 'Υπό τάς περιστάσεις έπιβληθεῖσα ποινή δέν είναι τοιαύτη ώστε νά δικαιολογήται έπέμβασις έκ μέρους τοῦ 'Ανωτάτου Δικαστηρίου.

Δικαίωμα έλευθέρας έκφράσεως – 'Επιφυλάξεις καί περιορισμοί – "Αρθρον 19 τοῦ Συντάγματος καί Εύρωπαϊκή Σύμβασις διά τήν προάσπισιν τών 'Ανθρωπίνων Δικαιωμάτων.

"Εφεσις κατά ποινής.

"Εφεσις ύπό τοῦ Γεωργίου ΧατζηΝικολάου κατά τής τριμήνου ποινής φυλακίσεως τής έπιβληθείσης ύπό τοῦ 'Επαρχιακοῦ Δικαστηρίου Λευκωσίας (Ποινική 'Υπόθεσις ύπ' άρ. 29813/73) διά τό άδίκημα τής δημοσίας προκλήσεως τών κατοίκων είς βιαιοπραγίας έναντίον άλλήλων κατά παράβασιν τοῦ άρθρου 51(Α)(Ι) τοῦ Ποινικοῦ Κώδικος, Κεφ. 154 (ώς έτροποποιήθη ύπό τοῦ Νόμου 59/74).

Α. Εύτυχίου καί Κ. ΧατζηΝικολάου, διά τόν έφεσείοντα.

Γλ. Μιχαηλίδης διά τήν Δημοκρατίαν.

'Απόφασις*

Λ. ΛΟΙΖΟΥ, Δ.: Διά τής παρούσης έφέσεως ό έφεσείων προσβάλλει τήν ποινήν τριμήνου φυλακίσεως έπιβληθείσης είς αύτόν ύπό τοῦ 'Επαρχιακοῦ Δικαστηρίου Λευκωσίας τήν 9ην Φεβρου-

* An English translation of this judgment appears at pp. 67–70 *post*.

αρίου, 1976, ἀφοῦ παρεδέχθη ἐνοχὴν διὰ τὸ ἀδίκημα τῆς δημοσίας προκλήσεως τῶν κατοίκων εἰς βιαιοπραγίας ἐναντίον ἀλλήλων κατὰ παράβασιν τοῦ ἄρθρου 51 Α(Ι) τοῦ Ποινικοῦ Κώδικος, Κεφ. 154, ὡς τοῦτο ἐτροποποιήθη ὑπὸ τοῦ ἄρθρου 2 τοῦ περὶ Ποινικοῦ Κώδικος (Τροποποιητικοῦ) Νόμου τοῦ 1974 (Νόμος 59/74). 5

Τὸ ἐν λόγῳ ἀδίκημα διεπράχθη ὑπὸ τοῦ ἐφεσείοντος, ὑπὸ τὴν ἰδιότητά του ὡς τοῦ κατὰ νόμον ὑπευθύνου τῆς ἐφημερίδος «Μεσημβρινὴ» διὰ δημοσιεύσεως ἄρθρου εἰς αὐτήν, τὴν 1ην Ὀκτωβρίου 1975, ὑπὸ τὸν τίτλον «ΟΛΑ ΓΗΣ ΜΑΔΙΑΜ», τὸ ὁποῖον ἐτέθη ἐνώπιον τοῦ πρωτοδίκου δικαστηρίου ὡς τεκμήριον 1. 10

Ἐν σχέσει πρὸς τὸ ἴδιον ἀδίκημα προσήφθη ἐπίσης κατηγορία ἐναντίον τῆς Ἐκδοτικῆς Ἑταιρείας «ΕΛΛΗΝΙΚΑΙ ΕΚΔΟΣΕΙΣ ΓΛΑΥΞ ΛΤΔ» ἰδιοκτητρίας τῆς ρηθείσης ἐφημερίδος.

Εἰς τὸ κατηγορητήριον ὑπῆρχον ἀρχικῶς τρεῖς κατηγορίαι, ἀλλὰ ὅταν οἱ κατηγορούμενοι παρεδέχθησαν ἐνοχὴν εἰς τὴν πρώτην 15 κατηγορίαν ἡ κατηγοροῦσα ἀρχὴ δὲν προσήγαγε μαρτυρίαν ἐν σχέσει πρὸς τὰς ἄλλας δύο καὶ οὕτω οἱ κατηγορούμενοι ἀπηλλάγησαν τῶν ἐν λόγῳ κατηγοριῶν.

Οἱ λόγοι τῆς παρούσης ἐφέσεως ὡς οὗτοι ἐκτίθενται εἰς τὴν εἰδοποίησιν ἐφέσεως καὶ ἀνεπτύχθησαν ὑπὸ τοῦ συνηγόρου τοῦ ἐφε- 20 σείοντος εἶναι:

(α) Λαμβανομένων ὑπ' ὄψιν τῶν προσωπικῶν συνθηκῶν τοῦ ἐφεσείοντος ὡς καὶ τῶν περιστατικῶν τῆς ὑποθέσεως ἡ ἐπιβληθεῖσα ὑπὸ τοῦ πρωτοδίκου δικαστηρίου ποινὴ εἶναι προδήλως ὑπερβολικὴ καὶ 25

(β) Τὸ πρωτόδικον δικαστήριον ἐσφαλμένως ἀπέρριψε αἴτησιν τῆς ὑπερασπίσεως ὅπως προσαγάγῃ μαρτυρίαν πρὸς τὸν σκοπὸν μετριασμοῦ τῆς ποινῆς.

Ὡς ἔχει ἐπανειλημμένως ἀναφερθῆ εἰς προηγουμένας ἀποφάσεις τὸ θέμα τῆς ποινῆς εἶναι πρωτίστως θέμα τοῦ πρωτοδίκου δικα- 30 στηρίου καὶ τὸ Δικαστήριον τοῦτο, δικαιολογεῖται νὰ ἐπέμβῃ μόνον ὁσάκις ἱκανοποιηθῇ ὅτι ἡ ποινὴ εἶναι εἴτε καταφανῶς ὑπερβολικὴ εἴτε προδήλως ἀνεπαρκὴς ἢ ἐσφαλμένη ἀπὸ ἀπόψεως νομικῆς ἀρχῆς.

Δέον ὅπως τονισθῇ ὅτι τὸ Δικαστήριον τοῦτο ἀποδίδει ἰδιαιτέ- 35 ραν σημασίαν εἰς τὴν παροῦσαν ὑπόθεσιν καθότι αὕτη ἀφορᾷ τὸ δικαίωμα τῆς ἐλευθερίας τῆς ἐκφράσεως, ἕνα τῶν θεμελιωδῶν δικαιωμάτων τοῦ ἀνθρώπου τὰ ὁποῖα ἀναγνωρίζονται καὶ διασφαλίζονται ὑπὸ τοῦ ἄρθρου 19 τοῦ Συντάγματος ὡς ἐπίσης καὶ

τῆς Εὐρωπαϊκῆς Συμβάσεως διὰ τὴν προάσπισιν τῶν Ἀνθρωπίνων Δικαιωμάτων, ἡ ὁποία ἰσχύει εἰς τὴν Κύπρον δυνάμει τῶν διατάξεων τοῦ ἄρθρου 169 τοῦ Συντάγματος, κατόπιν τῆς ψηφίσεώς, ὑπὸ τῆς Βουλῆς τῶν Ἀντιπροσώπων, τοῦ Περὶ Εὐρωπαϊκῆς Συμβάσεως διὰ τὴν προάσπισιν τῶν Ἀνθρωπίνων Δικαιωμάτων (Κυρωτικοῦ) Νόμου τοῦ 1962 (Νόμος 39/62). Ἀλλὰ καὶ εἰς τὰς προνοίας τοῦ Συντάγματος καὶ τῆς Συμβάσεως ὑπάρχουν ὡρισμέναι ἐπιφυλάξεις καὶ περιορισμοὶ καὶ πολὺ ὀρθά, κατὰ τὴν γνώμην μας, διότι ἐνῷ οὐδεὶς δύναται νὰ ἀμφιβάλλῃ ὅτι τὸ δικαίωμα τῆς ἐλευθερίας τῆς ἐκφράσεως εἶναι μία, θὰ ἐλέγαμεν, εὐλογία, καὶ ἕνα χαρακτηριστικὸν οἱασδήποτε πολιτισμένης κοινωνίας καὶ δημοκρατικῆς χώρας, ἐν τούτοις δέον ὅπως μὴ παραγνωρίζωνται καὶ οἱ λόγοι δι' οὓς τὸ δικαίωμα τοῦτο δύναται νὰ ὑπαχθῇ διὰ νόμου εἰς ὡρισμένους περιορισμοὺς καὶ κυρώσεις ἀποτελοῦντας ἀναγκαῖα μέτρα διὰ τὴν προστασίαν τῆς ὑπολήψεως ἢ τῶν δικαιωμάτων τοῦ πολίτου, τὴν ἐθνικὴν ἀσφάλειαν, τὴν προάσπισιν τῆς τάξεως καὶ πρόληψιν τοῦ ἐγκλήματος, τὴν παρεμπόδισιν τῆς κοινολογήσεως ἐμπιστευτικῶν πληροφοριῶν, τὴν διασφάλισιν τοῦ κύρους καὶ τῆς ἀμεροληψίας τῆς δικαστικῆς ἐξουσίας· καὶ τοῦτο πρὸς τὸν σκοπὸν διατηρήσεως ἑνὸς λογικοῦ ἰσοζυγίου μεταξὺ τοῦ δικαιώματος εἰς τὴν ἐλευθερίαν ἐκφράσεως καὶ τῶν συνεπαγομένων καθηκόντων καὶ εὐθυνῶν τοῦ πολίτου.

Ἡ σχετικὴ νομοθετικὴ διάταξις ἐπὶ τῆς ὁποίας ἐστηρίχθη ἡ κατηγορία εἶναι μὲν περιοριστικὴ τοῦ δικαιώματος τῆς ἐλευθερίας τῆς ἐκφράσεως, δὲν ὑπάρχει ὅμως εἰσήγησις ἢ ἰσχυρισμὸς ὅτι δὲν ἐμπίπτει ἐντὸς τῶν ἐπιτρεπομένων περιορισμῶν.

Κατὰ τὴν διάρκειαν τῆς ἀγορεύσεώς του ἐνώπιον τοῦ πρωτοδίκου δικαστηρίου καὶ ἐνώπιόν μας σήμερον ἐν σχέσει πρὸς τὸ θέμα τῆς ποινῆς ὁ εὐπαίδευτος συνήγορος τοῦ ἐφεσείοντος δὲν ἠμφισβήτησε ὅτι μερικὰ ἀποσπάσματα τοῦ ἐν λόγῳ δημοσιεύματος ἀντιβαίνουν πράγματι πρὸς τὰς προνοίας τοῦ νόμου· καὶ ἐκεῖνο τὸ ὁποῖον παραμένει νὰ ἀποφασισθῇ εἶναι κατὰ πόσον, λαμβανομένων ὑπ' ὄψιν ὅλων τῶν περιστατικῶν τῆς ὑποθέσεως, ἡ ἐπιβληθεῖσα ποινὴ φυλακίσεως εἶναι καταφανῶς ὑπερβολική.

Ἐνώπιον τοῦ Δικαστηρίου τούτου ὁ εὐπαίδευτος συνήγορος τοῦ ἐφεσείοντος ἔθεσε ὡρισμένους λόγους πρὸς ὑποστήριξιν τῆς εἰσηγήσεώς του αὐτῆς καὶ ἐτόνισε ὅτι ὁ ἐφεσείων δὲν ἐπροσχεδίασε τὸ συμπέρασμα τὸ ὁποῖον ἐξάγεται ἐκ τοῦ ἐν λόγῳ δημοσιεύματος, καὶ ὅτι τοῦτο ἦτο ἀπόρροια βεβιασμένων ἐνεργειῶν καὶ συνετάχθη ὑπὸ τὸ κράτος ψυχολογικῆς ἐντάσεως ἐν ὄψει τῶν συνθηκῶν ὑπὸ τὰς ὁποίας ἐνήργει τότε ὁ ἐφεσείων καὶ ἐν ὄψει δημοσιευμάτων εἰς ἄλλας ἐφημερίδας. Ὡσαύτως εἰσηγήθη ὅτι τὸ πρωτόδικον

δικαστήριον ἔδωσε μεγάλην βαρύτητα εἰς τὰς προηγουμένας καταδίκας τοῦ ἐφεσείοντος.

Ὁ ἐφεσείων βαρύνεται μὲ τρεῖς προηγουμένας καταδίκας. Ἡ πρώτη ἦτο τὸν Ἰούνιον τοῦ 1973 ὅτε κατεδικάσθη διὰ τὸ ἀδίκημα τῆς δημοσιεύσεως ψευδῶν εἰδήσεων κατὰ παράβασιν τοῦ ἄρθρου 50 τοῦ Ποινικοῦ Κώδικος, ἐν σχέσει πρὸς τὸ ὁποῖον τοῦ ἐπεβλήθη ποινὴ προστίμου £200 καὶ ἐγγυήσεως £500 διὰ τρία χρόνια. Εἰς τὴν ἰδίαν ὑπόθεσιν ἐλήφθη ὑπ' ὄψιν κατηγορία διὰ στασιαστικὴν δημοσίευσιν κατὰ παράβασιν τῶν ἄρθρων 47(6) καὶ 48 τοῦ Ποινικοῦ Κώδικος. Ἡ δευτέρα προηγουμένη καταδίκη του ἦτο τὸν Ὀκτώβριον τοῦ ἰδίου ἔτους ὅτε ὁ ἐφεσείων κατεδικάσθη πάλιν διὰ τὸ ἀδίκημα τῆς δημοσιεύσεως ψευδῶν εἰδήσεων κατὰ παράβασιν τοῦ ἄρθρου 50 τοῦ Ποινικοῦ Κώδικος ἐν σχέσει πρὸς τὸ ὁποῖον τοῦ ἐπεβλήθη πρόστιμον £60, ἡ δὲ τρίτη καταδίκη ἦτο τὸν Σεπτέμβριον τοῦ 1975 ὅτε κατεδικάσθη διὰ τὸ ἀδίκημα τῆς παρεμβάσεως εἰς ἀστυνομικὴν ἔρευναν κατὰ παράβασιν τῶν ἄρθρων 122(β) καὶ 20 τοῦ Ποινικοῦ Κώδικος, ἐν σχέσει πρὸς τὸ ὁποῖον τοῦ ἐπεβλήθη ποινὴ ἐγγυήσεως £500 διὰ τρία χρόνια. Εἰς τὴν τρίτην αὐτὴν περίπτωσιν ἐλήφθη ὑπ' ὄψιν καὶ ἄλλη ὑπόθεσις διὰ καταφρόνησιν τοῦ δικαστηρίου. Βεβαίως ἡ ποινὴ ἡ ὁποία ἐπιβάλλεται διὰ μίαν ὑπόθεσιν εἶναι ποινὴ διὰ παράβασιν τοῦ νόμου εἰς τὴν ὑπόθεσιν ἐκείνην καὶ οὐδεὶς δύναται νὰ τιμωρηθῇ ἐκ δευτέρου ἐν σχέσει πρὸς τὸ ἴδιον ἀδίκημα, ἀλλὰ αἱ προηγουμέναι καταδίκαι εἶναι στοιχεῖον τὸ ὁποῖον ἔχει βαρύνουσαν σημασίαν διὰ τὴν ἐπιμέτρησιν τῆς ποινῆς καὶ δέον ὅπως λαμβάνεται ὑπ' ὄψιν ὑπὸ τοῦ Δικαστηρίου, διότι ἀποτελοῦν ἔνδειξιν τῆς στάσεως καὶ τοῦ σεβασμοῦ τοῦ κατηγορουμένου πρὸς τοὺς νόμους τῆς πολιτείας.

Ὅσον ἀφορᾷ τὸ θέμα τῆς ἀπορρίψεως ὑπὸ τοῦ πρωτοδίκου δικαστηρίου τῆς αἰτήσεως περὶ προσαγωγῆς μαρτυρίας ὑπὸ τοῦ ἐφεσείοντος πρὸς τὸν σκοπὸν μετριασμοῦ τῆς ποινῆς, ἐπειδὴ κατέστη σαφὲς εἰς τὸ Δικαστήριον, ἐκ τῶν πρακτικῶν τῆς ὑποθέσεως, ὅτι ἡ ἀγόρευσις τοῦ συνηγόρου τοῦ ἐφεσείοντος ἐκάλυψε κατ' οὐσίαν τὴν μαρτυρίαν τὴν ὁποίαν ἤθελε νὰ προσαγάγῃ καὶ τοῦτο ἄνευ οὐδεμίας ἐνστάσεως ἢ ἀμφισβητήσεως ἐκ μέρους τῆς κατηγορούσης ἀρχῆς, εὑρίσκομεν ὅτι ὀρθῶς τὸ δικαστήριον ἐθεώρησεν ὅτι δὲν ὑπῆρχεν ἀνάγκη προσαγωγῆς τοιαύτης μαρτυρίας.

Ἐν ὄψει ὅλων τῶν τεθέντων ἐνώπιόν μας στοιχείων κατελήξαμεν εἰς τὸ συμπέρασμα ὅτι, ὑπὸ τὰς περιστάσεις, ἡ ἐπιβληθεῖσα ὑπὸ τοῦ πρωτοδίκου δικαστηρίου ποινὴ δὲν εἶναι τοιαύτη ὥστε νὰ δικαιολογῆται ἡ ἐπέμβασις ἐκ μέρους μας εἰς τὴν παροῦσαν ὑπόθεσιν καὶ ὡς ἐκ τούτου ἡ ἔφεσις ἀπορρίπτεται.

This is an English translation of the judgment in Greek appearing at pp. 63–66 *ante*.

Criminal Law—Sentence—Three months' imprisonment for publicly encouraging violence on the part of the inhabitants—Section 51 A(I) *of the Criminal Code, Cap.* 154 *(as amended by Law* 59 *of* 1974)*—Sentence primarily a matter for the trial Court—Principles on which Court of Appeal will interfere with a sentence imposed by a trial Court—Previous convictions—Importance of, in measuring sentence—In the circumstances sentence imposed not such as to justify intervention by Court of Appeal.*

Right to freedom of expression—Formalities, conditions or restrictions to—Article 19 *of the Constitution and European Convention for the Protection of Human Rights and Fundamental Freedoms.*

Appeal against sentence.

Appeal against sentence by Georghios Hjinicolaou who was convicted on the 9th June, 1976 at the District Court of Nicosia (Criminal Case No. 29813/75) on one count of the offence of publicly encouraging violence on the part of the inhabitants, contrary to section 51(A)(I) of the Criminal Code, Cap. 154 (as amended by Law 59/74) and was sentenced by Demetriades, P.D.C. to three months' imprisonment.

A. Eftychiou with *C. Hadjinicolaou*, for the appellant.

Gl. Michaelides, for the respondents.

The following judgment was delivered by:-

L. LOIZOU, J.: By the present appeal the appellant attacks the sentence of three months' imprisonment imposed on him by the District Court of Nicosia on the 9th February, 1976, after he had pleaded guilty to the offence of publicly encouraging violence on the part of the inhabitants contrary to s. 51A(I) of the Criminal Code, Cap. 154, as amended by s. 2 of the Criminal Code (Amendment) Law, 1974 (Law 59/74).

The aforesaid offence was committed by the appellant, in his capacity as the person responsible under the law for the newspaper "Messimbrini", by the publication of an article therein, on the 1st October 1975, under the title "OLA GHIS MADIAM" which was put before the trial Court as *exhibit* 1.

Regarding the same offence a charge was also preferred against the Publishing Company "GREEK PUBLICATIONS GLAFX LTD.", the owner of the aforementioned newspaper.

In the indictment there were originally three charges, but when the accused pleaded guilty to the first charge the prosecution did not offer evidence with regard to the other two and the accused were thus discharged of the aforesaid charges.

The grounds of the present appeal as they were set out in the notice of appeal and argued by counsel for the appellant are:- 5

(a) Taking into consideration the personal circumstances of the appellant and the circumstances of the case, the sentence imposed by the trial Court is manifestly excessive and 10

(b) The trial Court erroneously refused an application by the defence to adduce evidence in mitigation of sentence.

As it had been repeatedly stated in previous judgments, the question of sentence is primarily a matter for the trial Court and this Court can only interfere if satisfied that the sentence is either manifestly excessive or manifestly inadequate or wrong in principle. 15

It should be stressed that this Court attaches special importance to the present case because it concerns the right of freedom of expression, one of the fundamental rights of the subject which are recognized and safeguarded by article 19 of the Constitution as well as by the European Convention for the protection of Human Rights, which is effective in Cyprus by virtue of the provisions of article 169 of the Constitution, after the enactment, by the House of Representatives, of the European Convention for the protection of Human Rights (Ratification) Law, 1962 (Law 39/62). But even in the provisions of the Constitution and the Convention, there are certain formalities, conditions and restrictions and very rightly so, in our view, because although nobody can doubt that the right of expression is, we should say, a blessing, and a characteristic of every civilized community and democratic country the reasons for which this right may be placed, by law, under certain restrictions and penalties constituting necessary measures for the protection of the reputation or rights of the citizen, the national security, the promotion of order and prevention of crime, the prevention of the disclosure of information received in confidence and the maintenance of the authority and impartiality of the judiciary should, nevertheless, be not disregarded, and this for the pur- 20 25 30 35 40

pose of preservation of a fair balance between the right of freedom of expression and the resulting duties and responsibilities of the citizen.

The relevant provision of the law on which the charge was
5 based is on the one hand restrictive of the right of freedom of expression, but there is, however, on the other hand, no submission or contention that it does not fall within the permitted restrictions.

In the course of his address before the trial Court and today
10 before us, on the question of sentence, learned counsel for the appellant has not disputed that certain parts of the relevant publication actually contravene the provisions of the law; and what remains to be decided is whether, taking into account all the circumstances of the case, the sentence of imprisonment
15 imposed is manifestly excessive.

Learned counsel for the appellant has put before this Court certain grounds in support of this submission of his and stressed that the appellant had not designed beforehand the conclusion resulting from the relevant publication and that this was the
20 result of hasty actions and was written under psychological stress in view of the circumstances under which the appellant was then acting and in view also of publications in other newspapers. He also submitted that the trial Court attached much weight to the previous convictions of the appellant.

25 The appellant is burdened with three previous convictions. The first was in June 1973 when he was convicted of the offence of publishing false news contrary to section 50 of the Criminal Code, in respect of which he was sentenced to a fine of £200 and bound over in the sum of £500 for three years. In the
30 same case a count for a seditious publication contrary to sections 47(6) and 48 of the Criminal Code was also taken into consideration. His second previous conviction was in October of the same year when the appellant was again convicted of the offence of publishing false news contrary to section 50 of the Criminal
35 Code and was sentenced to a fine of £60; and the third conviction was in September 1975 when he was convicted of the offence of interfering with police investigations contrary to sections 122(b) and 20 of the Criminal Code, and was bound over in the sum of £500 for three years. In this third case
40 another case concerning contempt of Court was also taken into consideration. The sentence imposed in a case is certainly a

sentence for violation of the law in that case and nobody can be punished for a second time for the same offence; but previous convictions constitute an element which is of great importance in measuring punishment and should be taken into consideration by the Court, because they constitute an indication of the attitude and respect of the accused towards the laws of the State.

With regard to the rejection by the trial Court of the application for adducing evidence by the appellant in mitigation of sentence, since it has been made clear to the Court from the record of the case, that the address of counsel for the appellant has covered in effect the evidence which he wanted to adduce and this without any objection or dispute on the part of the prosecution, we find that the Court has rightly considered that there was no need for adducing such evidence.

In the light of all the material put before us we arrived at the conclusion that, in the circumstances, the sentence imposed by the trial Court is not such as to justify our intervention in the present case and the appeal is therefore dismissed.

Appeal dismissed.