1979 July 2

[A. LOIZOU, MALACHTOS, SAVVIDES, JJ.]

PANICOS CHRISTOU,

Appellant,

v.

THE POLICE

Respondents.

(*Criminal Appeal No.* 4039).

Criminal Law—Sentence—Assessment—Primarily the task of the trial Court—Six months' imprisonment for giving false information to the police—Mitigating factors—It is up to the appellant and his counsel to place them before trial Judge—Emotional stress arising out of likelihood to face criminal proceedings—Whether a mitigating factor—No undue weight given to appellant's previous convictions—Sentence not manifestly excessive in the circumstances.

Court of Appeal—Appeal against sentence—Principles on which Court of Appeal interferes.

The appellant was found guilty on his own plea and sentenced to six months' imprisonment on a charge of giving false information to a Police Officer.

The appellant, who was 24 years of age, was involved in an accident whilst driving a car and the false information complained of was a statement he gave to the Police that the car in question was at the time of the accident driven by another person. In 1970 he was committed to the Reform School on a charge of stealing, and of breaking and entering into a school; seven other cases were taken into consideration. He was also convicted for shop breaking but no sentence was imposed on him. In 1975 on a charge of causing actual bodily harm he was sentenced to £10.—fine and bound over in the sum of £100.—for one year. In 1976 he was sentenced to three years' imprisonment for causing grievous bodily harm. At the time of the trial

he was serving a sentence of four months' imprisonment but the sentence in this case was made to commence immediately.

Upon appeal against sentence counsel for the appellant contended:

(1) That in passing sentence the trial Judge did not give due weight to the emotional stress of the appellant caused by the fact that he was likely to face criminal proceedings for his conduct;

(b) That the trial Judge gave undue weight to the previous convictions of the appellant inspite of the fact that the offence for which he was standing trial at the time was of an entirely different character;

(c) That the trial Judge did not have before him all relevant factors that would complete the picture relevant to the determination of the appropriate sentence.

The fact omitted to be placed before the trial Judge was that the professional rehabilitation of the appellant called for his being out of prison.

Held, that the emotional stress of the appellant does not seem to go beyond his desire to exonerate himself from liability arising out of the said accident; that from the material before this Court there is nothing to suggest that undue weight has been given to the previous convictions of the appellant; that the prosecution could not be responsible for the omission to place before the trial Judge the fact relating to the professional rehabilitation of the appellant because it was a fact within the knowledge of the appellant and it was up to him and his counsel to place it before the trial Judge if they thought that it might constitute a further mitigating factor; that the assessment of sentence is primarily the task of trial Courts and an Appellate Court should not interfere with such assessment even if its members feel that the sentence imposed is severe but not manifestly excessive; that this Court will not interfere with the sentence which cannot, in the circumstances, be considered as manifestly excessive; and that, accordingly, the appeal must be dismissed.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Panicos Christou who was

convicted on the 10th May, 1979 at the District Court of Larnaca (Criminal Case No. 685/79) on the count of the offence of giving false information to a Police Officer, contrary to section 114 of the Criminal Code Cap. 154 and was sentenced by Pitsillides, S.D.J. to six months' imprisonment.

Chr. Kitromilides, for the appellant.

C. Kypridemos, Counsel of the Republic, for the respondents.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal against sentence on the ground that it is manifestly excessive in the circumstances.

The appellant was found guilty on his own plea and sentenced by the District Court of Larnaca to six months imprisonment on a charge of giving false information to a Police Officer, contrary to section 114 of the Criminal Code, Cap. 154, which offence carries a term of maximum imprisonment up to one year or £750.—fine, or both.

The facts of the case as they appear from the record are these: The appellant who is 24 years of age, was driving, in the evening of the 9th February, motor vehicle No. HH.146, on the Limassol —Nicosia road, and had with him a passenger, a young soldier, to whom he had given a lift. During that Journey he ran into the rear of a motor lorry. Both himself and the young soldier were injured, fortunately not seriously. They were given first aid at the Larnaca Hospital and discharged. Outside the Hospital the appellant suggested to the said soldier that they should both make statements to the Police that the car was at the time of the accident, driven by a certain Michael Pavlou, as he himself had no driving licence. The appellant and the said Michael Pavlou eventually gave statements to the Police to that effect. Later on, however, the appellant changed his mind, gave a new statement to the Police relating therein both the circumstances under which the accident in question occurred and admitting that he was the one that was driving the vehicle in question at the time. His explanation for giving this false statement was that he had obtained the keys from his father by telling him that the said Pavlou would be driving the vehicle, but as Pavlou could not the last minute do so, he started off alone and he thought of not disclosing to his father the truth.

The appellant from a very young age found himself on the wrong side of the law. In 1970 he was committed to the Reform School on a charge of stealing, and of breaking and entering into a school; seven other cases were taken into consideration. He was also convicted for shop breaking but no sentence was imposed as he was already in the Reform School. In 1975 on a charge of causing actual bodily harm he was sentenced to £10.— fine and bound over in the sum of £100.—for one year. On the 21.8.1976 he was sentenced to three years imprisonment for causing grievous bodily harm.

In the course of the plea in mitigation it was mentioned that on that day the appellant was serving a term of imprisonment for four months for some other offences. It may be mentioned here that the learned trial Judge did not make use of that information as aggravating the position of the appellant but on the contrary it was treated in his favour so that the term of imprisonment passed in respect of this case would commence immediately, and not at the expiration of the former sentence as the case would have been had no direction been made to that effect under the Criminal Procedure Law, Cap. 155, section 117(2).

It has been argued on behalf of the appellant that the learned trial Judge in passing sentence did not give due weight to the emotional stress of the appellant caused by the fact that he was likely to face criminal proceedings for his conduct and that he gave undue weight to the previous convictions of the appellant, inspite of the fact that the offence for which he was standing trial at the time was of an entirely different character than those for which he had been previously convicted, and finally that the trial Judge did not have before him all relevant factors that would complete the picture relevant to the determination of the appropriate sentence. With regard to the latter argument, the fact omitted to be placed before the trial Judge was that the professional rehabilitation of the appellant called for his being out of prison. Needless to say that this was an omission for which the prosecution could not be responsible. It was a fact within the knowledge of the appellant and it was up to him and his counsel appearing on his behalf, to place same before the trial Judge if they thought that it might constitute a further mitigating factor. In any event this could not have had any real effect in the determination of the appropriate sentence as he

was already serving the previous sentence of imprisonment imposed upon him.

With regard to the other two arguments, we have come to the conclusion that there is no merit in them. The emotional stress of the appellant invoked by his counsel does not seem to go beyond his desire to exonerate himself from liability on the one hand and implicate another person, a willing collaborator at that, with all the consequences that might entail to other people concerned in the outcome of an accident case, such as the possible claim by the lorry owner and the Insurance Companies involved in a civil suit for damages. The learned trial Judge in passing sentence referred indeed to the previous convictions of the appellant and observed that apparently the appellant had derived no benefit from the sentences that had been passed on him by the Courts and went on to say that independently of the previous convictions he believed that the offence to which the appellant pleaded guilty was a serious one and the appropriate sentence should be custodial, and imposed the sentence against which the present appeal has been filed. From this material there is nothing to suggest that undue weight has been given by the learned trial Judge to the previous convictions of the appellant.

In the circumstances we are not prepared to interfere with the sentence imposed which cannot, in the circumstances, be considered as manifestly excessive. The assessment of sentence is primarily the task of trial Courts and an appellate Court should not interfere with such assessment even if its members feel that the sentence imposed is severe but not manifestly excessive.

We, therefore, dismiss the appeal.

Appeal dismissed.