

1982 July 6

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

SOTERIS GEORGHIOU ATHINIS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4294*).

Criminal Law—Sentence—Carrying and possession of firearms and possession of ammunition—Concurrent sentences of four years', three years' and eighteen months' imprisonment—Seriousness of the offences having regard to the recent history of Cyprus—
5 *And need to be punished severely by the Courts—Sentence not manifestly excessive but on the lenient side—Upheld.*

The appellant pleaded guilty to the offences of carrying and possessing a firearm, the importation of which is prohibited and to the offence of possessing of explosive substances and was
10 sentenced to four years' imprisonment on the first offence, three years' imprisonment on the second and eighteen months' imprisonment on the third, all sentences to run concurrently. The articles in question were found well concealed in his motor-car and in his workshop. The appellant was 26 years of age,
15 married with one child and ran a repair shop for television sets and radios in Limassol.

Upon appeal against sentence:

That, no doubt the unlawful possession and use of firearms and ammunition are serious offences, as they unquestionably
20 undermine the law and pave the way to anarchy which are the worse enemies of democracy and happy life therein, safe and free from fear and intimidation; that the recent history of Cyprus is a constant reminder of the bitter price this happy Island and its people have paid through the irresponsible and
25 unlawful possession and use of firearms; that, consequently,

such offences have to be punished severely by the Courts on which ultimately rests the responsibility for the enforcement of the law and the protection of the State and its citizens from the evils that the commission of such offences and offences connected with their use entail; that this Court has not been persuaded that the sentence imposed on the appellant is manifestly excessive justifying interference with it; that if anything, bearing in mind the totality of the circumstances of this case, including the personal circumstances of the appellant, it was on the lenient side; accordingly the appeal must fail.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Soteris Georghiou Athinis who was convicted on the 1st February, 1982 at the Assize Court of Limassol (Criminal Case No. 16352/81) on one count of the offence of carrying a firearm the importation of which is prohibited contrary to sections 3(1)(b), 2(a) and 28 of the Firearms Law, 1974 (Law 38/74) (as amended by Law 27/78), on one count of the offence of possessing a firearm contrary to sections 3(1)(b), 2(b) and 28 of the above Law and on one count of the offence of possessing explosive substances contrary to sections 4(4)(d), 5(a)(b) of the Explosive Substances Law, Cap. 54 (as amended by Law 27/78) and was sentenced by Hadjiitsangaris, P.D.C., Artemis, S.D.J. and Korfiotis, D.J. to four years' imprisonment on the first count, to three years' imprisonment on the second count and to eighteen months' imprisonment on the third count, all sentences to run concurrently.

Appellant appeared in person.

A. M. Angelides, Senior Counsel of the Republic, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. The appellant was found guilty on his own plea by the Limassol Assize Court on three counts:

Count 1—Carrying a firearm, the importation of which is prohibited, contrary to sections 3(1)(b), (2)(a), and 28 of the Firearms Law 1974, Law No. 38 of 1974, as amended by Law 27 of 1978.

Count 2—Possession of the same firearm, contrary to sections 3(1)(b), 2(b) and 28 of the same laws.

Count 3—Possession of explosive substance without a permit, contrary to sections 4(4)(d), (5)(a)(b), of the Explosive Substances Law, Cap. 54, as amended by Law No. 27 of 1978.

The maximum sentences provided by the aforesaid laws are imprisonment for life in respect of the first count and 15 years' imprisonment for counts 2 and 3. The sentence imposed on the appellant by the Assize Court was four years' imprisonment from the date of conviction on the first, three years on the second and 18 months on the third count, all sentences to run concurrently. This appeal is against the sentence imposed on the ground that same is manifestly excessive.

The appellant who is 26 years of age, married and the father of one child, runs a repair shop for television sets and radios in Limassol. On the 10th October, 1981, he was arrested by virtue of a judicial warrant in connection with other offences and he was remanded in custody. His car under registration No. JX.103 was locked and kept in the Central Police Station of Limassol. Four days later the Police carried out, in his presence, a meticulous search in his workshop and in the attic, after removing its wooden floor, they found two leather bags. The first one contained 96 live rounds of ammunition of 7.62 calibre and a small box with another 12 live rounds of ammunition of the same calibre. The second leather bag contained two magazines with 56 live rounds of ammunition, again of the same calibre. On being cautioned, he replied that he had not placed them there but may be they were there before he leased the shop.

A search then of his car was carried out, in his presence, and between the partitioning cover which is between the back seat of the car and its boot, they found an automatic offensive weapon, make M. 58, and a bag containing two magazines and 58 rounds of ammunition of 7.62 calibre. The appellant was then cautioned and he said that he did not know anything about them.

The exhibits were examined and tested by an expert attached

to the Forensic Science Department of the Police Headquarters at Nicosia and found the weapon to be in good serviceable condition and out of the 220 live rounds of ammunition nine were fired and found in good serviceable condition.

On the same day the appellant made a voluntary statement in which he said that the said weapon, magazines and ammunition came to his possession when he was serving as a soldier in the Infantry at Paphos. First he hid it in a dry wall at Vounaros and then he brought and hid it in the attic of his shop. He put forward the allegation that he placed it in his car together with the two magazines containing the 58 live rounds of ammunition where it was found by the Police, but he was prevented by clients to place in the car also the rest of the ammunition found in his attic and left it to be done after he would close his shop. His intention was to place then somewhere and telephone the Police in order to find them, but he was arrested before he could do what he intended to and he was afraid to disclose their existence when arrested and supposed that they might not find them and so he would have the opportunity of handing them to the Police later.

The Assize Court considering the circumstances under which the firearm and ammunition in question were found, the place they were hidden and the careful effort to conceal their existence, together with the fact that five years had passed from the date which the said articles came to the possession of the appellant until they were discovered, found his explanation about his intention to deliver them to the Police as not a convincing one.

The Assize Court then referred to a number of relevant cases where the Supreme Court repeatedly stressed the seriousness of offences relating to the possession and carrying of firearms and ammunition and the fact that recently the legislator increased the sentences provided by law, obviously for the purposes of discouraging the commission of such crimes. It then considered, in passing sentence, what was said on behalf of the appellant by his counsel and what was contained in the Social Investigation Report regarding his family problems which merited certain leniency, but came to the conclusion that the sentence that it had to impose had to reflect the seriousness of the offences.

No doubt the unlawful possession and use of firearms and ammunition are serious offences, as, to say the least, they unquestionably undermine the law and pave the way to anarchy which are the worse enemies of democracy and happy life therein, safe and free from fear and intimidation.

The recent history of Cyprus is a constant reminder of the bitter price this happy Island and its people have paid through the irresponsible and unlawful possession and use of firearms. Consequently, such offences have to be punished severely by the Courts on which ultimately rests the responsibility for the enforcement of the law and the protection of the State and its citizens from the evils that the commission of such offences and offences connected with their use entail.

Having given due consideration to what the appellant has said in this appeal, we have not been persuaded that the sentence imposed on him is manifestly excessive justifying interference with it on our part; if anything, bearing in mind the totality of the circumstances of this case, including the personal circumstances of the appellant, it was on the lenient side.

For all the above reasons this appeal is dismissed.

Appeal dismissed.