1982 August 4

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

CHRISTOS TH. IERONYMIDES,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 4320).

Criminal Law—Sentence—Mitigating factors—Mental and psychological condition of offender and losses and hardships suffered by him—Confession of crime, plea of guilty and repentance—Reinstatement of the loss to complainant—Clean past record and non prosecution of accomplices—Principles applicable.

Criminal Law—Sentence—Public officers—Offences involving dishonesty by—Sentence should, as a rule, be a sentence of imprisonment of substantial duration.

Criminal Law—Sentence—Stealing by a person in the public service, forgery, uttering a forged document and obtaining money by false pretences—Concurrent sentences of three, six and two years' imprisonment—Neither manifestly excessive nor wrong in principle.

The accused, who was an officer of the Central Bank of Cyprus in charge of the department dealing with bonds, pleaded guilty on a count of stealing by a person in the public service, on two counts of the offence of forgery of a bond, on two counts of the offence of uttering a forged document and on two counts of the offence of obtaining money by false pretences, the amount of money in respect of each count being £15,000; and was sentenced to three years' imprisonment on the stealing count, six years on each of the forgery and uttering counts and to two years' imprisonment on each of the obtaining money by false pretences counts, all sentences to run concurrently.

Upon appeal against sentence counsel for the appellant mainly contended:

(1) That the trial Court did not take into consideration and did not attach any importance to:

(a) The fact that the appellant committed the offence whilst under emotional stress on account of his passion for gambling, as a result of which his power of resistance was reduced and thus committed the offence.

(b) The fact that other persons who assisted the appellant for the commission of the unlawful acts and who benefited substantially from such offences were not brought before the Court.

(c) The sincere and actual repentance of the appellant, his confession and plea of guilty.

(d) The terrible consequences and sanctions to the career and life of the appellant that his conviction would entail and the unfortunate position in which his family has been placed.

(e) The reinstatement of the loss of £30,000.- caused to the bank.

(f) The fact that appellant had no criminal tendencies.

Held, (1) that though the mental and psychological condition of a person is a mitigating factor which has been recognised as such as part of ones personal circumstances, it has to be evaluated in the context of the circumstances surrounding the commission of the offence as relevant to the degree of his responsibility and therefore useful to the determination of the appropriate sentence, in the present case the approach of the trial Court was a correct one in the context of the circumstances of this case and the well thought and well planned mode of operation of the appellant; that moreover credit for mitigating factors is not an entitlement of the offender, as the sentencer is permitted to refrain from making an allowance for mitigating factors in order to achieve a recognized penal objective, such as general deterrence, the prevention of further offences for the duration of the sentence or the provision of appropriate treatment for the offender; accordingly contention (1)(a) should fail.

(2) That though an accused person should not be made to pay alone for what others did in this case the accused acted alone; accordingly contention (1)(b) should fail.

(3) That though confession coupled with the element of repentance is in favour of an accused person this is not absolute, they have to be viewed in the circumstances of each case; and that though decided cases suggest certain discounts in the event of a plea of guilty this Court has not been persuaded that the good administration of criminal justice in the field of sentencing should be moulded into definite percentages and fixed discounts; that in the sentencing process the sentencers discretion should be guided by the two broad principles of taking account first of the nature and circumstances of the offence and secondly of the personal circumstances of the offender, with all mitigating or aggravating factors that there may exist and then decide upon the appropriate sentence, bearing in mind the characteristics of democratic life which consist of the preservation of Law and order, the protection of society and the protection of the life and property of the citizens; that it is only then that justice can appear as it ought to, both firm and magnanimus; accordingly contention (1)(c) should fail.

(4) That though losses and hardships suffered by an offender over and above the sentence imposed by the Court may be taken into account as mitigating factors, and they will probably carry more weight when the offence is unconnected with the career or position that is jeopardized than when it is committed in the course of the offender's work and there is involved a grave abuse of the offender's position in this case the trial court did take these factors into consideration and expressly said so in its judgment; accordingly contention (1)(d) should fail.

(5) That though the reinstatement of loss and damage by an accused person to the victim of his crime, has always been a mitigating factor which ought to be taken into consideration within reasonable limits, a balance has to be maintained and should not be used so as to enable the convicted to bring themselves out of the penalties for crime; accordingly contention (1)(e) should fail.

(6) That the acknowledgment by the Court of the fact that the appellant was proved "as a person who certainly does not have criminal tendencies but basically good human talents and who committed a very serious isolated mistake and that he is a person from a good family with clean criminal records", does not mean

that the Court because of this, as it has been claimed on behalf of the appellant, ought to have imposed a lesser sentence, or that this Court ought to reduce the one imposed; accordingly contention (1)(f) should fail.

(7) That one should not lose sight of the fact that offences of this category involving dishonesty committed by public officers, employees or other persons in a position of trust, have been treated by the legislature as being of exceptional severity and naturally the Courts must give effect to it; that the seriousness of offences of this kind has been stressed by this Court so that officers faced with the temptation of appropriating public money, must know that the penalty for committing such a breach of trust as a rule is bound to be a sentence of imprisonment of substantial duration; that in many instances, however, the aggravating effect of the abuse of trust has to be balanced because of the exemplary character shown by the accused until the time of their commission and the grave consequences to his career as well as the loss of pension rights which may result from his conviction; that there is no room for this court to interfere with the sentence imposed, as the appellant has not satisfied this Court that on the totality of the circumstances the sentence imposed is manifestly excessive or that the trial Court acted on wrong principle; accordingly the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

Christodoulou v. Republic (1974) 2 C.L.R. 4;

Kyprianou v. Republic (1971) 2 C.L.R. 158;

Bradley [1970] Cr. L.R. 171;

Inwood [1974] 60 Cr. App. R. 70;

Turner and Others [1975] 61 Cr. App. R. 67 at p. 51;

Agathocleous v. Republic (1978) 2 C.L.R. 1;

R. v. de Haan [1967] 3 All E.R. 618 at p. 619;

R. v. Harper, Court of Appeal, Criminal Division, October 6, 1967;

Charalambous and Another v. The Police (1981) 2 C.L.R. 182;

Constantinides v. The Police (1981) 2 C.L.R. 209;

Petrou v. Police (1981) 2 C.L.R. 216;

R. v. Tilbrook and Sivalingam [1978] Cr. L.R. 172;

Ioannou v. The Police, 18 C.L.R. 46;

Attorney-General v. Ttofi, 1962 C.L.R. 225;

Attorney-General of the Republic v. Lazarides (1967) 2 C.L.R. 210;

Azinas and Another v. The Police (1981) 2 C.L.R. 9 at p. 126.

Appeal against sentence.

Appeal against sentence by Christos Th. Ieronimides who was convicted on the 8th May, 1982 at the Assize Court of Nicosia (Criminal Case No. 9019/82) on the following counts of the offences of (1) stealing by person in public service contrary to sections 255 and 267 of the Criminal Code, Cap. 154 (2) forgery of a bond contrary to sections 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 (3) uttering of a forged document contrary to section 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 (4) obtaining money by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154 (5) forgery of a bond contrary to sections 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 (6) uttering of a forged bond contrary to sections 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 and (7) obtaining money by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154 and was sentenced by Artemides, Ag. P.D.C., Kronides and Ioannides, D.JJ. to three years' imprisonment on count 1, six years' imprisonment on counts 2, 3, 5 and 6 and to two years imprisonment on counts 4 and 7.

T. Papadopoulos with *E. Efstathiou* and *N. Michaelides*, for the appellant.

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

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. The appellant was prosecuted before the Nicosia Assize Court and pleaded guilty to the following seven counts on the information:

"*STATEMENT OF OFFENCE*

First Count

Stealing by person in public service, contrary to ss. 255 and 267 of the Criminal Code, Cap. 154.

PARTICULARS OF OFFENCE

The accused between the 1st day of January, 1981 and the

31st day of January, 1982, on a date unknown to the Prosecution, at Nicosia, in the District of Nicosia, being employed in the public service, to wit, with the Central Bank of Cyprus, did steal 17 sheets of bond paper to the value of 408 mils, the property of the Central Bank of Cyprus.

STATEMENT OF OFFENCE

Second Count

Forgery of a bond, contrary to Sections 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 and P.I. 658/69.

PARTICULARS OF OFFENCE

The accused between the 1st day of January, 1981 and the 10th day of July, 1981 on a date unknown to the Prosecution, at Nicosia, in the District of Nicosia, did forge a bond by introducing on it the number 048844, which corresponds to winning bond No. 048844 of the 12th series which was drawn on 10.3.79 for £15,000.- and the signature of the Governor of the Central Bank of Cyprus.

STATEMENT OF OFFENCE

Third Count

Uttering of a forged bond knowing the same to be forged, contrary to Sections 2, 4, 9, and 10 of the Savings Loan Law, Cap. 209 and P.I. 658/69.

PARTICULARS OF OFFENCE

The accused on the 10th day of July, 1981 at Nicosia, in the District of Nicosia, did utter a forged bond, to wit, bond referred in Count 2 knowing the same to be forged.

STATEMENT OF OFFENCE

Fourth Count

Obtaining money by false pretences, contrary to Sections 297 and 298 of the Criminal Code, Cap. 154.

PARTICULARS OF OFFENCE

The accused at the time and place in count 3 hereof mentioned, by false pretences and with intent to defraud, did obtain the sum of £15,000.- from the Central Bank of

Cyprus the false pretences being in substance and to the effect that he, the accused, presented the forged bond described in count 2 hereof mentioned, for payment to the Central Bank of Cyprus, pretending that it was genuine, whereas in fact and in truth, it was forged.

STATEMENT OF OFFENCE

Fifth Count

Forgery of a bond, contrary to Sections 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 and P.I. 658/69.

PARTICULARS OF OFFENCE

The accused between the 1st January, 1981 and the 13th day of February, 1982 on a date unknown to the Prosecution at Nicosia, in the District of Nicosia, did forge a bond by introducing on it the number 01712, which corresponds to winning bond No. 01712 of the 18th series which was drawn on 8.12.79 for £15,000.-, and the signature of the Governor of the Central Bank of Cyprus.

STATEMENT OF OFFENCE

Sixth Count

Uttering of a forged bond knowing the same to be forged, contrary to Sections 2, 4, 9 and 10 of the Savings Loan Law, Cap. 209 and P.I. 658/69.

PARTICULARS OF OFFENCE

The accused on the 13th day of February, 1982 at Nicosia, in the District of Nicosia, did utter a forged bond, to wit, bond referred in count 5 knowing the same to be forged.

STATEMENT OF OFFENCE

Seventh Count

Obtaining money by false pretences, contrary to Sections 297 and 298 of the Criminal Code, Cap. 154.

PARTICULARS OF OFFENCE

The accused at the time and place in count 6 hereof mentioned, by false pretences and with intent to defraud, did obtain the sum of £15,000.- from the Central Bank of

Cyprus, the false pretences being in substance and to the effect that he, the accused, presented the forged bond described in count 5 hereof mentioned, for payment to the Central Bank of Cyprus, pretending that it was genuine, whereas in fact and in truth, it was forged."

He was sentenced to three years imprisonment on the first count, six years' imprisonment on the second, third, fifth and sixth, and two years' imprisonment on counts four and seven. All sentences were ordered to run concurrently.

It may be mentioned here that the maximum sentence provided by Law in respect of Counts 2, 3, 5 and 6 is 15 years' imprisonment and for count 1, seven years' imprisonment and for counts 4 and 7, three years' imprisonment.

The appellant has appealed against the aforesaid sentences imposed on him and the detailed grounds set out in his notice of appeal may usefully be set out here in full as in effect they contain in a concise manner the very able plea in mitigation made on his behalf before the Assize Court and the arguments advanced in this Court on appeal:-

"Grounds of Appeal

1. The sentence of the trial Court was manifestly excessive in view of the circumstances of the case and the special circumstances personal to the appellant.

2. The trial Court in determining the sentence did not take at all into consideration and did not attach any importance to and did not consider as mitigating circumstances the following facts and/or elements of the case, i.e.

(a) The fact that the appellant committed the offence whilst under emotional distress on account of his passion for gambling, as a result of which his power of resistance was reduced and thus committed the offence.

(b) The fact that other persons assisted the appellant, by unlawful acts and/or intentions and/or actions in the commission of the offence, who substantially benefited by the commission of the offence, was not considered as having contributed to the commission of the offence by the appellant, and for this as a mitigating factor.

(c) It was not taken into consideration that the irregular management and follow up of the procedure regarding the printing and the keeping of the records of the bonds by the Central Bank as a result of which without being cancelled, bonds at an advanced stage of printing were left for completion, contributed to the commission of the offence.

3. The Court in deciding the appropriate sentence did not give the necessary importance and/or did not assess duly the following elements and/or facts of the case, i.e.:

(a) The sincere and actual repentance of the appellant.

(b) The fact that the appellant by his conviction will really suffer terrible consequences and sanctions for the rest of his life, as is the complete ruining of his career and his expectations for future rehabilitation, an irreparable stigma, the dissolution of his engagement and the tragic position in which his family were placed.

(c) The fact that he made good the loss suffered by the Bank to a greater extent than what he himself benefited out of the offence since a sum of several thousands of pounds remained in the hands of his accomplices, who appropriated same without punishment, the appellant having paid also those sums to the Bank.

If the aforesaid factors were evaluated and assessed duly, then in any event the sentence imposed should have been reduced substantially.

4. The judgment of the trial Court in relation to the sentence was the result of misconception of law and/or fact and wrong in principle for the following further reasons, i.e.

Whilst the Court decided that the appellant 'is proved as a person who certainly does not have criminal tendencies but basically good human talents and who committed a very serious isolated mistake, and that he is a person from a good family with clean criminal record', yet it imposed on him the sentence of six years' imprisonment.

The aforesaid finding of fact by the Court in conjunction with his relatively young age, his clean criminal record, his

actual repentance, the restitution of the loss to the Bank and all that has been set out hereinabove, constitute the sentence imposed wrong in law and manifestly excessive. This especially because the sentence of imprisonment does not serve the purpose which it is intended to remedy in view of the principles of the Case-law and the Science of the Law, in the sense that the purpose of the sentence would be served by the imposition of a considerably shorter in duration sentence".

The facts of the case are briefly as follows:

The appellant is a University graduate holding a degree in Economics. In December 1978 he was employed by the Central Bank of the Republic and in 1979 he was posted as officer in charge of the department dealing with bonds, the supervision of their printing and the cashing of bonds at their maturity. The payment of bonds that won were also within the sphere of his duties.

In March 1979, in addition to his other duties he was appointed as one of the key-holders of the misprinted bonds. At the draw of the 8th December 1979, bond number 01712 of the 18th issue won £15,000.-. This bond belonged to Dr. I. Polydorides, who, however, did not check his bonds until the 9th March 1982. When he visited the Central Bank in order to cash it the appellant approached Dr. Polydorides and mentioned to him that a mistake had been made and falsely told him that the number that won was 01713. He then arranged for a meeting with Dr. Polydorides in the same afternoon at which he tried to explain that a mistake had occurred with regard to that bond for which he was himself responsible and requested him not to mention anything and that he undertook to compensate him by paying by instalments the sum of £15,000.-. Dr. Polydorides, however, on the following morning reported the matter to Mr. Theodorides, an official of the Central Bank. At the inquiry carried out at the Central Bank it was proved that a bond with the same number had been cashed by a certain Ioannis Christou, a lottery ticket seller. Explanations were asked from the appellant, who put forward certain false allegations. It was discovered later that Christou had cashed on the 13th February 1982 from the Central Bank bond bearing number 01712 and received the amount of £15,000.-. In fact that bond had been forged by the appellant in the following way. Being in charge

for the keeping of the paper for the printing of the bonds he took some extra copies of the 18th series before they were taken to the printing for the purpose of printing thereon the serial number and the signature of the Governor of the Bank and with a stamp he placed on it the number 1712 forging at the same time the signature of the Governor.

The appellant had already ascertained that the said bond had won but for a long time it had not been presented for payment. The appellant gave this bond to Christou in order to present it for payment himself and obtain the benefit of taxation. Christou returned the money to the appellant on the same day.

On the 10th March 1982, the appellant was taken to the police station where a statement was obtained from him under interrogation in which he denied any connection with the case. On the following day he was arrested. In the course of the investigations and following further inquiries at the Central Bank it was discovered that savings bond number 048844 of the 12th series which had won on the 10th March 1979, and appeared as unclaimed had in fact been presented for payment and cashed on the 10th July 1981 by a certain Myrna Konteatou. The appellant, who appeared to know for some time Konteatou, visited her on the 9th July 1981, and mentioned to her that one of his bonds had won the sum of £15,000.-. As, however, he did not want to cash himself this bond so that his parents and friends would not know about it, on account of the position he held with the Bank, he agreed with Konteatou to present it for payment herself. The appellant, however, knew that a certain Loizos Markou, a displaced person from Lefkoniko had informed the Bank that he was the lawful owner of the said bond which, however, remained behind in his village which had been occupied by the Turks. The appellant then visited with Konteatou, Markou at his place of work and mentioned to him that Konteatou was the holder of a bond with the same number. The appellant misled Markou by telling him that this dispute would take years to be resolved and it would be better to come to an arrangement with Konteatou. Finally Markou was persuaded to take the sum of £3,000.- and withdraw the declaration he had submitted to the Bank. After that Konteatou cashed the bond and deposited the money in her account from which

she was paying by instalments the appellant. The appellant had forged this bond in the same way as he had done with the other one. The appellant was interrogated for this bond but he did not admit any connection with the illegality.

On the 13th April 1981 in the morning, the appellant made a statement to the Police which he wrote down himself in which he admitted all the charges against him setting out in detail the facts. In that statement he expressed also his regret and repentance for the offences he had committed.

The trial Court in its well reasoned judgment high-lighted certain aspects of the case, both in relation to the appellant, his personal circumstances and his background, as well as to the offences as such. It observed that for his age the appellant was a privileged young man with all the essential elements for his professional advancement; that he comes from a decent and well organized family and that his parents took care of his education, as well as his financial and social establishment.

With regard to the offences, it observed that he had used an ingenious plan which he executed with great talent but neither his intelligence nor his talent would have helped him had he not abused the responsible office he was holding. As we have seen, it stressed that he lied to Mr. Polydorides and it pointed out that he misled Markou, by telling him that story about Konteatou and her bond and persuading him unfairly to accept the sum of C£3,000.- and withdraw the claim that he had submitted to the Bank, as a result of which the bond held by Konteatou was cashed.

Whilst on this point it may be mentioned that the appellant himself exonerated, however, Konteatou of any knowledge of the offences that were being committed and in our view the turn of events justified the Court to conclude that the appellant acted alone and that he was absolutely responsible for his deeds.

We propose to deal with the various points raised in the order in which they appear in the grounds of appeal, earlier set out in this judgment and first the question of the significance of the emotional stress of an accused person as a mitigating factor which has been recognized as such as part of ones personal circumstances. (See inter alia *Christodoulou v. The Republic*

(1974) 2 C.L.R. p. 4; *Georghios Kyprianou v. The Republic* (1971) 2 C.L.R. p. 158. The trial Court considered this aspect of the case. It referred to the bad habit of gambling of the appellant and the debts he incurred as a result thereof as well as to the anxiety he was feeling because of that, his desire to pay them off and at the same time his inability to resist and stop that bad habit. The trial Court, however, when saying that it could not accept that all these constituted an element of mitigation, stressed the fact that the bad habit of the appellant was his absolute choice and that the solution of the problem which he created for himself could not be found in the stealing of money.

The mental and psychological condition of a person, however, has to be evaluated in the context of the circumstances surrounding the commission of the offence as relevant to the degree of his responsibility and therefore useful to the determination of the appropriate sentence, but in the present case the approach of the trial Court was a correct one in the context of the circumstances of this case and the well thought and well planned mode of operation of the appellant who was fully aware of the seriousness of the offences he was committing and of the consequences they might produce.

Moreover, there is ample authority for the proposition that it is:

> "the general principle that credit for mitigating factors is not an entitlement of the offender, as the sentencer is permitted to refrain from making an allowance for mitigating factors in order to achieve a recognized penal objective, such as general deterrence, the prevention of further offences for the duration of the sentence or the provision of appropriate treatment for the offender. As has been argued, these considerations are not normally held to justify a sentence which is disproportionate to the immediate offence, but they may justify the sentencer in ignoring mitigating factors and giving no credit for them. The effect of the principle allowing the sentencer to disregard mitigating factors in order to emphasize general deterrence or to achieve some other penal objective is most clearly seen where a number of offenders with different histories are involved together in an offence of substantial gravity. The principle allows the sentencer to refrain from making

distinctions between the offenders on the basis of their individual records and circumstances, but distinctions should still be made to reflect different degrees of responsibility in the commission of the offence. The point is illustrated by Turner and others, where a large number of appellants were sentenced to long terms of imprisonment for participating in a series of armed bank robberies. The Court declined to take account of variations in record which would normally be a basis for distinguishing between different participants - 'the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with offences of this gravity', but made reductions in some of the sentences to reflect variations in the degree of involvement and responsibility."

See Principles of Sentencing, second edition p. 47, by D. A. Thomas, and the cases of *Bradley* 14.10.69, 3275/69, [1970] Crim. L.R. 171; *Inwood* [1974] 60 Cr. App. R.70 and *Turner and others* [1975] 61 Cr. App. R. 67 at 91.

The second ground is that the trial Court did not consider as a mitigating factor the fact that other persons who assisted the appellant for the commission of the unlawful acts and who benefited substantially from such offences were not brought before the Court. No doubt an accused person should not be made to pay alone for what others did, and as held in *Agathocleous v. The Republic* (1978) 2 C.L.R. p.1, that one person should bear himself alone the full brunt of what happened. The factual position, however, of the case in hand as found by the trial Court does not warrant this complaint. This factor was indeed considered by the Court which said:

"It has been established by Case Law that it constitutes a mitigating factor the fact that not all accomplices to the offence under examination are before the Court. The Court must not punish only one from those coresponsible who will thus pay the price of the illegality which others committed. It constitutes a justified demand of the public, the equal and impartial administration of justice towards all those responsible for the illegality. We fundamentally disagree with the suggestion of the defence that in the present case which involved other persons, who are not

before us, this allegation does not stand at all from the facts as they have been related and have been accepted fully by the defence. Christou did not know anything about the forged bond which was given to him by the accused to cash. We may suppose that Konteatou should have suspected the commission of a certain illegality in which she would cooperate, yet her complicity to it cannot be supported. It should be fair also just to mention that the Police directed its investigations towards Konteatou for her cooperation. The accused was specifically questioned, but he however, discharged her of nay responsibility. We have no doubt that the accused acted alone and he is absolutely responsible for his acts."

The third ground under this heading, that the irregular procedures and the lack of supervision of same in the Bank regarding the issue and payment of bonds was not taken into consideration, cannot stand as the trial Court did take into consideration this situation and for which it said:

"The defence mentioned also as another mitigating factor the fact that the accused was 'provoked' in some way for the commission of these offences because there did not exist satisfactory security measures with regard to the custody, printing and cashing of bonds. It was further maintained that the employees of the Bank contravened the relevant regulations regarding the bonds and these contraventions helped the accused commit the offences. It is a fact that after this case the appropriate organs of the Central Bank may become wiser and intensify the security measures with regard to the custody, printing and cashing of bonds. We do not accept, however, that possible smaller contraventions of the regulations constitute for the accused a provocation to commit the offences. It must not be forgotten that the accused himself was in the responsible position of an official for the printing, custody and cashing of bonds. Consequently it was expected of him as well as from all public officers who served in positions of trust absolute integrity."

We agree fully with this approach.

Under the heading regarding the factors to which the trial

Court did not give due importance and which it did not evaluate properly, the first one as to the sincere and actual repentance of the appellant, the trial Court dealt with the matter as follows:

> "The defence has given weight to the confessions of the accused, both to the Police and to the Court as well as to his repentance which is expressed in his statement and before us. We are of the opinion that really this admission and repentance of the accused are the most fundamental elements that advocate in favour of the mitigation of sentence. Correctly appropriate weight has been given to these elements and we have appreciated in particular both the contents and the tenor of the address of Mr. Papadopoullos in which no effort was made to minimize the seriousness of the offences and the circumstances surrounding them, but emphasis was given to the personal circumstances of the accused and to his confession and repentance."

Indeed confessions coupled with the element of repentance have always been held to weigh in favour of an accused person. But this is not absolute, they have to be viewed in the circumstances of each case. For example if one is caught red handed or realises that there is no escape from paying for his deeds, his confession cannot be given the same credit as that of a man whose proof of guilt might be difficult or problematic. A plea of guilty is also a mitigating factor. As stated in the case of *R.* v. *de Haan* [1967] 3 All E.R., p. 618, at p. 619, "It is undoubtedly right that a confession of guilt should tell in favour of an accused person for that is clearly in the public interest".

Conversely, the fact that an accused pleads not guilty should not tell against him (see *R.* v. *Harper*, C.A. Criminal Division (Lord Parker C.J., Winn L.J. and Cooke L.J., October 6, 1967) Lord Parker in that case in giving the judgment on the appeal had this to say:

> "This court feels that there is a real danger that the appellant was being given what was undoubtedly a serious sentence because he had pleaded not guilty and had run his defence in the way indicated by the Recorder. This court feels that it is quite improper to use language which

may convey that an accused is being sentenced because he has pleaded not guilty, or because he has run his defence in a particular way. It is, however, proper to give an accused a lesser sentence if he has shown genuine remorse, amongst other things by pleading guilty".

With regard to confessions by accused persons and repentance being mitigating factors, reference may be made, inter alia, to the cases of *Charalambous and another* v. *The Police*, (1981) 2 C.L.R. 182; *Constantinides* v. *The Police* (1981) 2 C.L.R. p. 209 and *Petrou* v. *The Police* (1981) 2 C.L.R. 216.

In *R.* v. *Tilbrook and Sivalingam* [1978] Criminal Law Review p. 172, a reduction of sentence was ordered because of an accused person's plea of guilty and of course his having given evidence for the Crown. We are not concerned with the second leg of this position. There is, however, a very interesting commentary to the case in the said report to the effect that it gave an indication of the amount of the reduction which may be appropriate to reflect the fact that an offender has pleaded guilty. It is stated therein, that cases where the Court has reduced the sentence to reflect a plea of guilty and for no other reason, suggest that the appropriate "discount" will be between one quarter and one third of the term which otherwise will be appropriate.

Learned counsel for the appellant built a most interesting argument on the aforesaid proposition regarding the discount that had to be made in the present case in addition to the reduction justified on account of the existence of the remaining mitigating factors. However, in spite of the force of his arguments we have not been persuaded that the good administration of criminal justice in the field of sentencing should be moulded into definite percentages and fixed discounts. We feel that in the sentencing process the sentencer's discretion should be guided by the two broad principles of taking account first of the nature and circumstances of the offence and secondly of the personal circumstances of the offender, with all mitigating or aggravating factors that there may exist and then decide upon the appropriate sentence, bearing in mind the characteristics of democratic life which consist of the preservation of Law and order, the protection of society and the protection of the life and property of the citizens.

It is only then that justice can appear as it ought to, both firm and magnanimus.

Unquestionably the trial Court did take duly into consideration the confession and plea of guilty of the appellant as well as his repentance. It said, "the defence has given weight to the admission of the accused, both to the Police and to the Court as well as to his repentance which is expressed in his statement before us. We are of the view that really this confession and repentance of the accused is the most fundamental element that advocates in favour of mitigation of sentence".

As it is very appropriately pointed out in "Sentencing in Cyprus" by Pikis (1978) p. 27:

> "Repentance after arrest, manifested in a positive manner by surrendering to the authorities, by making a frank confession of crimes for which the authorities have no notice or knowledge, as well as divulging information leading to the arrest of accomplices, constitutes a strong ground in mitigation. Genuine repentance indicates that the accused, after reflection, condemns his criminal behaviour, an attitude that makes repetition of the offensive conduct unlikely. Further, the admission of a crime is, in itself, instrumental to crime detection, thereby reinforcing the battle against crime much to the benefit of society.
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> It has been repeatedly held that admission of the crime upon arrest is a valid reason for mitigation. (See, inter alia, *Gordon Charles Wheeler, Michael Roy Smith, Philip Alfred Drew* v. *The Police*, 1964 C.L.R. 83). The weight that may be attached to confessions will depend on the stage at which an admission is made, other evidence in the hands of the police supporting the charge and generally the motive behind the confession. Certainly, greater weight is attached to a confession made out of remorse than a belated confession solely designed to improve the position of the accused.
>
> Crimes disclosed in the statement of a detainee, unconnected with the offence under investigation, should be punished less severely than might otherwise be merited. There is authority that the punishment for such crimes

must not exceed the punishment imposed for the offences for which the accused was arrested. (*Keith Marley* v. *The Republic*, 1964 C.L.R. 143).

It is in the public interest to encourage offenders to confess their crimes; naturally, the extension of leniency to them is a practical reward intended to encourage confessions and make the path of surrender not unattractive. Repentance will be more convincing if accompanied by the surrender of the tools of crime, if any, to the police (*Ioannis Antoni Vouniotis* v. *The Republic* (1971) 2 C.L.R. 203), and by the disclosure of the names of accomplices (*Georghios Loizou* v. *The Republic* (1971) 2 C.L.R. 196).

The next ground to which again the trial Court has dealt with were the terrible consequences and sanctions to the career and life of the appellant that his conviction would entail, as well as the unfortunate position in which his family has been placed.

The trial Court did take that into account and expressly said so in its judgment when it said that

"in addition to the confession and sincere repentance of the accused we consider as a serious mitigating factor also the consequences his conviction had and will have in the future of the accused. He has already been dismissed from the Central Bank and certainly his career must be considered at least for a long time as ruined. This case, in addition to the suffering which brings to the accused himself it has caused suffering to his family, which from what we understand bears deeply the stigma and the commission of these offences by the accused".

It is generally accepted that losses and hardships suffered by an offender over and above the sentence imposed by the Court may be taken into account as mitigating factors, although they will probably carry more weight when the offence is unconnected with the career or position that is jeopardized than when it is committed in the course of the offender's work (see Thomas, *Principles of Sentencing*, 2nd Ed., p. 214). In *Williams* (6.12. 1971 3449/A/71), a Police officer convicted of stealing clothing while off duty was sentenced to twelve months' imprisonment. The Court considered that for the appellant the conviction involves punishment other than that imposed by the sentence,

in the loss of his career and pension rights accummulated over twenty years and this was a matter to be given weight. His sentence was reduced.

In cases which involve a grave abuse of the offender's position, the loss of career and other hardships will clearly have less weight as mitigating factors (*Cairns* 9.7.1974 1351/A/74 1974, Criminal Law Review 674). But even in cases where the offence is committed in the course of the offender's employment, the additional losses may have some mitigating effect.

We next come to the reinstatement of the loss of C£30,000.- caused to the Bank and the rest of what is contained in Ground 3(c) which was also taken into consideration by the trial Court and for which it said:-

> "Although the compensation does not reduce the gravity and the immorality which are contained in the offences, yet we take this fact into consideration as a mitigating factor in considering the appropriate sentence".

We agree with this approach, the reinstatement of loss and damage by an accused person to the victim of his crime, has always been a mitigating factor which ought to be taken into consideration within reasonable limits. It applies, however, in such cases, by some analogy, what was said with regard to compensation orders in the case of *Inwood* [1974] 60 Cr App. R. 70, at p. 73, by Scarman L.J.: "Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime". It seems that a balance has to be maintained.

On the totality of the circumstances, we have come to the conclusion that the sentence imposed by the trial Court was neither manifestly excessive nor wrong in principle, nor was as claimed on behalf of the appellant in Ground 4 of the Notice of Appeal, the result of legal or factual misconception. Furthermore, the acknowledgment by the Court of the fact that the appellant was proved "as a person who certainly does not have criminal tendencies but basically good human talents and who committed a very serious isolated mistake and that he is a person from a good family with clean criminal records", does not mean that the Court because of this, as it has been claimed

on behalf of the appellant, ought to have imposed a lesser sentence, or that this Court ought to reduce the one imposed.

One should not lose sight of the fact that offences of this category involving dishonesty committed by public officers, employees or other persons in a position of trust, have been treated by the legislature as being of exceptional severity, and naturally the Courts must give effect to it. Indeed, the seriousness of offences of this kind has been stressed by this Court so that officers faced with the temptation of appropriating public money, must know that the penalty for committing such a breach of trust as a rule is bound to be a sentence of imprisonment of substantial duration. In many instances, however, the aggravating effect of the abuse of trust has to be balanced because of the exemplary character shown by the accused until the time of their commission and the grave consequences to his career as well as the loss of pension rights which may result from his conviction. But with that aspect we have already dealt in this judgment. For their gravity, stressed as already said in the past by this Court, there exist many judicial pronouncements in a series of cases (see, inter alia, *Ioannou* v. *The Police*, XVIII C.L.R., p. 46; *The Attorney-General* v. *Ttofi*, 1962 C.L.R. 225; *The Attorney-General of the Republic* v. *Costas Lazarou Lazarides* (1967) 2 C.L.R., p. 210; as well as *Azinas and Another* v. *The Police* (1981) 2 C.L.R., p. 9, at p. 126 et seq).

In the present case we are unanimous of the view that there is no room for us to interfere with the sentence imposed, as the appellant has not satisfied this Court that on the totality of the circumstances the sentence imposed is manifestly excessive or that the trial Court acted on wrong principle. It was clear from the whole tenor of its judgment that the sentence was measured against the gravity of the offences which have so much public disapproval. The Public Service constitutes the backbone of the State and its integrity secures stability and strengthens the faith of the public that expects the much desired fair application of the laws and a good administration.

As pointed out repeatedly, this Court cannot substitute itself for the trial Court in measuring their sentence. In the result the appeal should fail and is hereby dismissed.

Appeal dismissed.